

# **EXHIBIT 13**

August 2,  
2016

Your Honor,

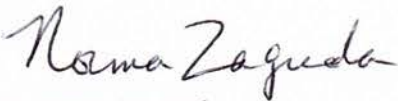
I am writing this letter to you on behalf of John Simonlacaj and wish to attest to his character. John is a dear friend and this may seem surprising as I am a stay at home Mother of 3, soon to be 4. John works full time in NYC to support his family. For starters, John and I come from the "same place" as first generation Americans whose parents came to this great country as immigrants with no money or resources. Both of our families worked indescribably hard to build a better life and fulfill the American Dream. That was no small feat, but it was made possible by deep faith, perseverance and commitment to family. These values were instilled in us daily and this would lead us to find a natural bond as friends. John will stand before you soon, but please know, there is more to John than his mistakes.

John and I have children the same age. It is impossible to speak of John without speaking of his kids. This is where he is most alive. His love for his children, his role as their Father is who John is at his core. A true family man who loves and gives unconditionally. John loves his children with the warmth and zest of a Norman Rockwell painting. His commitment to his wife and children are only paralleled to the tremendous respect he has for his parents. You see, he still lives in the same home as his aging parents. This arrangement wasn't made when they retired, it has always been John's top priority to care and provide for his entire family. This isn't always easy but John takes the tough moments and uses them as teaching moments to his children.

Another aspect of John that is important to be aware of is his tremendous faith. Please know that John is not a man of ego. John is actually a man of Faith, Prayer, and Humility. When he speaks of his religion, of God, his reaction is visceral. You can see and feel that this man knows he has the good Lord to thank for his health and that of his children. His deep faith breeds his enormous compassion. Two years ago my husband's Father [REDACTED] and my Mother [REDACTED] [REDACTED] Our family was inconsolable. John knew leaving the house was difficult so he invited us over to his home where we could bring our kids. John's wife prepared a home cooked meal and John entertained us all with hours of karaoke, John at the mic. John has made this a tradition, continuing to open his home to us and our children to replace the sadness with happy memories.

Your Honor, I ask that you read this letter and please consider that there is more to the man standing before you than his mistakes. He a caring and generous person who has clearly lost his way. The lesson will not be lost on him, this I guarantee. I ask that you have mercy on John and consider exercising your leniency.

Sincerely,

A handwritten signature in cursive script that reads "Norma Zagreda". The signature is fluid and elegant, with the first letters of the first and last names being capitalized and prominent.

Norma Zagreda

# **EXHIBIT 14**

[REDACTED]

July 18, 2016

Re: Letter of Reference for John Simonlacaj

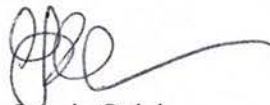
Your Honor:

I am writing to you in support of John Simonlacaj.

I am the [REDACTED] [REDACTED] and have nearly [REDACTED] [REDACTED] John Simonlacaj for [REDACTED] [REDACTED] and have found him to be a stand up guy who always does the right thing given any situation – whether it be personal or professional. I have always been impressed with John's values, work ethic and, loyalty. We have spent significant time together outside the office as well, as we daughters the same age. It has really given me an opportunity to see how devoted John is to him family. His children adore him and he adores them. John is quick to give advice and even quicker to lend a hand. He has a heart of gold and I can always rely on him. [REDACTED] y and when John heard, he called to ask me what he could do to help me in my time of need. He later showed up to my mother's house with platters of food for our guests during the shiva. I can't tell you how much this meant to me and my family.

Your Honor, this is the John I treasure as a friend. He realizes his mistake in filing a false tax return and has expressed remorse to me many times in our conversations. I would ask Your Honor for any leniency you can give John in this matter.

Sincerely,



Laurie Golub  
[REDACTED]

# **EXHIBIT 15**

[REDACTED]

To Whom It May Concern:

We appreciate the support of Mr. John Simonlacaj. His patronage of various events and galas in the past has helped ensure the success year over year. Hi past support of the Muscle Team Gala has helped raise funds for the [REDACTED] and to help send children to the annual [REDACTED] [REDACTED] is here for our families in hometowns across America to empower the kids and adults we serve. From offering support groups and educational seminars that help caregivers, parents and individuals through their journey — to assisting families with durable medical equipment to maintain independence — to giving kids with muscular dystrophy the best week of the year at [REDACTED] [REDACTED] is here to help families maintain and improve their health while actively pursuing education, passions, careers, dating, marriage and other goals associated with living independently.

Best Regards,

*Cathy Connolly*

# **EXHIBIT 16**



[REDACTED]

June 22, 2016

To whom it may concern:

I write this letter as the [REDACTED] [REDACTED] in support of John Simonlaj. John has been a friend and ardent supporter of the [REDACTED] [REDACTED] for nearly a decade.

[REDACTED] [REDACTED] Over the past 60 plus years, [REDACTED] has revolutionized medical care in Israel: pioneering Israel's first open-heart, artificial heart, congenital heart defect surgeries, founding its foremost rehabilitation facility, and introducing the most advanced medical technologies to Israel and the world. Funding of this strategic and revolutionary medical center is the core mission of [REDACTED] [REDACTED] to strengthen this premier medical institution and to provide it with the necessary funds to expand infrastructure, acquire cutting edge equipment and support some of the world's most dynamic biomedical research - research which has time and again resulted in groundbreaking discoveries and innovations.

Over the past 9 years, I have come to know John to be a good person. He is hard working and really cares about [REDACTED] and the work we are doing. He has been respectful of everyone at our organization and is well-liked by my team. He always has a kind word and a never-ending supply of energy to help. He has never turned us down when asked to do something and has always given his 100% commitment when he takes something on. John has helped us to raise millions of dollars for [REDACTED] [REDACTED] over the last decade and over \$1 million for each of the last two years!

John is a committed family man and great father. Over the years, I've heard him tell countless stories about his children and he has brought them to some of our events. He has taught them about the importance of doing charity work and "giving back" and is a great role model in this regard.

I cannot speak highly enough about John and his contributions to [REDACTED] [REDACTED] We think the world of him as a supporter, fund-raiser, family man, and most importantly, as a human being. If you would like to discuss John, please don't hesitate to call me at [REDACTED] [REDACTED]

Sincerely,

  
Helene Feldman, [REDACTED]

[REDACTED]

# **EXHIBIT 17**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

v.

14 CR. 448 (VB)

MATTHEW LIBOUS,

Defendant.

-----X

U.S. Courthouse  
White Plains, N.Y.  
May 18, 2015  
2:00 p.m.

Sentencing Before: HON. VINCENT L. BRICCETTI,  
United States District Judge

APPEARANCES

PREET BHARARA  
United States Attorney  
Southern District of New York  
300 Quarropas Street  
White Plains, N.Y. 10601  
BY: JAMES McMAHON  
ANDREW J. KAMEROS  
Assistant United States Attorneys

JOHN C. MERINGOLO, Esq.  
ANJELICA B. CAPPELLINO, Esq.  
DAVID DeSTEFANO, Esq.  
375 Greenwich Street, 7th Floor  
New York, N.Y. 10013  
Attorneys for Defendant

Sue Ghorayeb, R.P.R., C.S.R.  
Official Court Reporter

1           THE CLERK:   United States of America against  
2   Matthew Libous.   Will counsel please note their appearance  
3   for the record.

4           MR. McMAHON:   Yes.   Good afternoon, Your Honor.  
5   James McMahon, Assistant United States Attorney, for the  
6   United States, and I'm joined at counsel table by Andrew  
7   Kameros, a Special Assistant United States Attorney.

8           MR. MERINGOLO:   Good afternoon, Your Honor.   John  
9   Meringolo, with Anjelica Cappellino and Dave DeStefano, and  
10   John Astarita, for Mr. Libous.

11           THE COURT:   Okay.   Have a seat everybody.  
12           Good afternoon.

13           All right.   This matter is on for sentencing today.  
14   The Defendant having been found guilty after a non-jury trial  
15   of Counts Two, Three and Four of the Superseding Indictment  
16   charging him with willfully subscribing false personal income  
17   tax returns for the years 2007, 2008 and 2009, respectively.

18           I have reviewed the following materials in  
19   preparation for sentencing:

20           The revised PSR, dated April 17th, 2015, prepared  
21   by Probation Officer Sara K. Willette.

22           Defense counsel's sentencing memorandum, dated April  
23   22nd, 2015, as well as letters and materials attached thereto.

24           The Government's sentencing memorandum, dated May  
25   6th, 2015.

1           I have received and reviewed additional letters  
2   from defense counsel dated May 12th and May 15th, and also  
3   an additional letter from the Government dated May 15th.  
4   I will note that I don't recall anyone asking permission to  
5   file replies or surreplies or replies to surreplies, and part  
6   of me just wants to ignore all of those extra letters, but  
7   I'm not going to do that. I have read them all.

8           In the future -- this is -- it should be to both  
9   sides, but the Government should know this already -- there  
10  shall be no replies when it comes to sentencing memoranda  
11  unless you ask permission first, especially in a case like  
12  this where -- I don't know what the exact count is, but the  
13  Government's -- the Defendant's sentencing memo is a  
14  several-pound three-ring binder that I have in my hand, and  
15  the Government submitted a 60-plus-page sentencing memo  
16  itself, and nothing in those additional submissions helped me  
17  in any way, shape or form in terms of deciding what to do in  
18  this case, the additional ones beyond the original sentencing  
19  memorandum.

20           Has anything else been submitted that I failed to  
21  mention?

22           MR. McMAHON: Not from the Government.

23           THE COURT: Mr. McMahon.

24           MR. McMAHON: No, sir.

25           THE COURT: Mr. Meringolo.

1 MR. MERINGOLO: Nothing from the defense.

2 THE COURT: All right. Mr. Meringolo, have you read  
3 the Presentence Report and discussed it with your client?

4 MR. MERINGOLO: Yes, I have, Your Honor.

5 THE COURT: Mr. Libous, have you read the  
6 Presentence Report?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Have you discussed it with your  
9 attorney?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Mr. McMahon, have you read the  
12 Presentence Report?

13 MR. McMAHON: Yes, Judge.

14 THE COURT: All right. You can have a seat.

15 The Presentence Report calculates the sentencing  
16 range as follows:

17 It says that the Base Offense Level is 14 under  
18 Guidelines Sections 2T1.1 and 2T4.1. It has a two-level  
19 upward adjustment for abuse of a position of private trust,  
20 such that the Final Offense Level is 16.

21 It says that the Defendant has no criminal history  
22 points and therefore is in Criminal History Category I.

23 Thus, according to the PSR, the sentencing range is  
24 21 to 27 months imprisonment. The supervised release range  
25 is up to one year per count, and, according to the PSR, the

1 fine range is \$5,000 to a \$104,000.

2 Now, there are a number of disputes about the  
3 various aspects of the Guidelines, so I'm going to address  
4 them, and then I may have some questions as we go forward.

5 So, let me just start by saying that I am well-aware  
6 of my authority to consider acquitted conduct in determining  
7 the applicable Guidelines range to the extent I find that the  
8 conduct has been proven by a preponderance of the evidence.  
9 However, the law is also clear that I am not required to take  
10 acquitted conduct into account in calculating the range and  
11 I decline to do so here.

12 And before I go on, I just want to ask Mr. McMahon  
13 a direct question. Did you, in preparing your sentencing  
14 memorandum, think about whether there was a chance that given  
15 the nature of the acquittal in this case, which essentially --  
16 it's not limited to this, but, essentially, it boiled down to  
17 a determination by me, which I stated on the record, that the  
18 Defendant had relied in good faith on accountants -- on an  
19 accountant's advice.

20 So, my question is: In light of that, did you think  
21 that there was any chance, and I mean any chance, anything  
22 more than zero, that I would, notwithstanding that -- and I  
23 recognize the burden of proof is different, but that's not  
24 really what I'm talking about. Notwithstanding my finding  
25 that he relied in good faith, that I would nonetheless find

1 a way to say that the acquitted conduct was proven?

2 In other words, I have to find that he didn't rely  
3 on good faith in order for me to find that.

4 So, I'm curious as to whether you actually thought  
5 there was anything more than a zero chance?

6 I need a direct answer to that.

7 MR. McMAHON: Yes. Yes, I did, and I based that  
8 on --

9 THE COURT: Because that was a ridiculous decision  
10 on your part. But, in any event, at least, I trust you. If  
11 you tell me that you thought there was something more than a  
12 zero chance, then I would say that your arguments are not  
13 frivolous. So, we'll leave it at that.

14 MR. McMAHON: Fine.

15 THE COURT: But, in any event, I'm not going to  
16 consider acquitted conduct here. The reasons should be  
17 obvious, but I'm going to put them on the record.

18 First of all, I do not find that willfulness as to  
19 the 2010, 2011 and amended 2011 tax returns has been proven  
20 by a preponderance of the evidence.

21 As I said at the trial, the principal reason for  
22 finding the Defendant not guilty on Counts One, Five, Six and  
23 Seven is that Mr. Libous relied in good faith on the  
24 accounting advice he received from his tax preparer, Mr.  
25 Marino. I'm not going to repeat what I said before. The



1 bottom line is that Mr. Libous's good faith reliance on his  
2 accountant's advice means he did not willfully file false tax  
3 returns for 2011 -- 2010 and 2011, but also means Mr. Libous  
4 did not willfully engage in a single course of criminal  
5 conduct for the period from 2006 through 2013, which is what's  
6 charged in Count One.

7 His good faith reliance on his accountant's advice  
8 also means that the Government has not proven willfulness even  
9 by a preponderance of the evidence standard. It's not enough  
10 for the Government to prove that Libous underreported his  
11 income for all these years. The Government would still have  
12 to prove willfulness -- I'm talking about acquitted conduct  
13 right now -- albeit on a lower standard of proof, in order for  
14 me to find that the acquitted conduct should be taken into  
15 account. I specifically find that the Government has not  
16 proven willfulness by a preponderance of the evidence.

17 I also said at the trial that the Government had not  
18 proven beyond a reasonable doubt that Mr. Libous was not  
19 reimbursing himself for legitimate business expenses in 2010  
20 and 2011 and 2012. Again, this is all part of the acquitted  
21 conduct. I was not convinced then and I remain unconvinced  
22 even under a preponderance standard that there were no  
23 business expenditures that corresponded to these  
24 reimbursements.

25 Of course, this does not mean Mr. Libous does not

1     owe taxes for the years of which he was acquitted. The  
2     returns were false, but Mr. Libous did not willfully file  
3     false tax returns for 2010 and 2011, and therefore I'm not  
4     going to punish him as if he did, which would be the effect  
5     of including the acquitted conduct in the calculation of  
6     guideline range. I'm not going to do that.

7             At the end of the day, I am required by law and by  
8     the need to do justice to impose a fair and reasonable  
9     sentence for the conduct of which Mr. Libous was convicted; a  
10    sentence sufficient but not greater than necessary to comply  
11    with the purposes of sentencing set forth in Section 3553(a)  
12    of Title 18 of the United States Code.

13            In this case, under all the relevant circumstances,  
14    I believe that taking the acquitted conduct into account would  
15    be unjust. The Government had a full and fair opportunity  
16    to prove that Mr. Libous acted willfully with respect to the  
17    2010 and 2011 tax years, it failed to do so. I'm not going  
18    to punish him as if they did.

19            Now, what I have said applies to the charged conduct  
20    of which Mr. Libous was acquitted, it does not necessarily  
21    apply to all of the uncharged conduct about which I heard  
22    extensive testimony at trial, and, specifically, it does not  
23    apply to the legal fees he received in 2006 that he did not  
24    tell his accountant about and did not report on his 2006 tax  
25    return. As I recall the testimony, the amount of these fees

1 was \$31,661 and his accountant did ask him about the  
2 additional income -- about any additional income. This is not  
3 acquitted conduct. Also, there is no defense of good faith  
4 reliance with respect to these unreported fees, for reasons  
5 that I spelled out at the time of the verdict, and I'm not  
6 going to repeat myself now. Therefore, it is clear that Mr.  
7 Libous willfully filed a false 2006 tax return, and I so find.

8           It is also clear that his unreported legal fee  
9 income in 2006 is relevant conduct under Guidelines Section  
10 1B1.3, because it was part of the same course of conduct as  
11 the offenses of conviction, and I so find.

12           However, I do not find that the inflated home office  
13 deduction in 2006 is relevant conduct. First of all, it's  
14 unclear what the inflated amount is and how it affected his  
15 tax liability. Also, I don't believe the Government proved  
16 willfulness with respect to this deduction even by a  
17 preponderance, and I do not intend to further complicate this  
18 already complicated proceeding by holding an evidentiary  
19 hearing on this item, which involves a relatively small amount  
20 of money, although, again, we don't know exactly how much  
21 money, but which involves a relatively small amount of money  
22 and which I do not believe will affect the Guidelines  
23 calculation in any event.

24           Also, the inflated home office deduction piece of  
25 this is not relevant conduct to the offenses of conviction,

1 because it does not involve unreported income. The 2007,  
2 '08 and '09 counts of conviction all involve some form of  
3 unreported income.

4 I also do not find that the alleged stolen rent  
5 checks in 2006 constitute relevant conduct. First of all,  
6 the alleged theft hasn't been proven by a preponderance of  
7 the evidence and I'm not going to unduly complicate this  
8 proceeding with an evidentiary hearing as to this relatively  
9 small amount of money, which I do not think would affect the  
10 Guidelines calculation anyway.

11 Second, I do not think it is relevant conduct,  
12 because it is very different conduct than simply not reporting  
13 legal fees or fees for other services rendered or not  
14 reporting the amount of personal expenses paid for by his  
15 employer.

16 Finally, I specifically find under Rule 32(i)(3)(B)  
17 that a ruling on this item is not necessary because the matter  
18 will not affect sentencing.

19 The upshot of all this is that the relevant conduct  
20 includes the following items:

21 For 2006, the \$31,661 in unreported legal fees.

22 For 2007, \$34,500 in unreported legal fees and/or  
23 fees for other services rendered.

24 For 2008, \$5158 of unreported legal fees -- again,  
25 we are in 2008 now -- as well as \$1,339 in personal expenses

1 paid for by Wireless Construction Solutions in 2008. And  
2 then, finally, in 2009, \$24,594 in personal expenses paid for  
3 by WCS in 2009. Let me just stop for one second.

4 I do see that you both agreed that that personal  
5 expenses number for 2008 went down substantially from what  
6 was alleged at trial. I am -- I need to hear this directly  
7 from you, Mr. Meringolo. Are you contending that it doesn't  
8 affect the Court's judgment that there was sufficient proof  
9 beyond a reasonable doubt for 2008?

10 I'm not sure what you are doing here exactly. I  
11 mean, it's fine for you to agree to a lower number, but it's  
12 not the number that was alleged and proven at trial.

13 MR. MERINGOLO: It was not, Your Honor, and that  
14 was, you know, subsequent to the trial.

15 When I believe Ms. Penland was on the stand and she  
16 said that she found things on the Internet. My client -- you  
17 know, we received that maybe three or four days before the  
18 trial, that particular item, which was the Marshal's Service.  
19 I believe it was like about \$3,800 or so, and my client -- we  
20 requested records, but we didn't receive it. We received  
21 those records thereafter.

22 THE COURT: Okay. But my question is: Are you  
23 making or are you --

24 MR. MERINGOLO: No, no.

25 THE COURT: -- waiving any argument?

1           Well, here is the question. That was not the way  
2   the case was tried. I mean, you know, I know it's a  
3   relatively small amount and -- but the way the case was tried  
4   is that that amount, meaning the personal expenses for 2008,  
5   was substantially higher than \$1,339. It was \$4,500; is that  
6   right? Is that what the number was?

7           MR. McMAHON: It's over-5,000, Judge.

8           THE COURT: All right. Let's say -- let's just say  
9   5,000 for purposes of discussion. So, now, that's the way it  
10  was charged at trial, and, of course, the amount of unreported  
11  income may be relevant to materiality. In other words, a  
12  false return, even a knowingly deliberately false return which  
13  is not materially false is not a crime. We didn't -- I don't  
14  think the issue of materiality was litigated. I don't recall  
15  it being -- the whole trial was about willfulness, it wasn't  
16  about materiality. But are you taking the position that --  
17  and I just want to hear from you.

18           Are you taking the position that the agreed upon  
19  lower number changes the -- you know, is relevant to the  
20  question of materiality vis-a-vis 2008, which I guess is  
21  Count 3? Is that right, Count 3?

22           MR. MERINGOLO: One moment, Your Honor.

23           THE COURT: Sure.

24           MR. MERINGOLO: Your Honor, at this time, we  
25  would -- we would answer the question as yes.

1           THE COURT: Okay. I forget what the question was  
2 now. What's the answer?

3           MR. MERINGOLO: Whether, whether it was a material  
4 issue of --

5           THE COURT: So, you think that it changes the  
6 materiality aspect of this?

7           MR. MERINGOLO: For 2008, the answer is, yes,  
8 because it's substantially lower with that.

9           THE COURT: What's the Government's position?  
10           Neither of you addressed this in your briefs. You  
11 just sort of agreed that the number was different for  
12 sentencing purposes, but it's not only different for  
13 sentencing purposes, it's also different in the sense that the  
14 total amount of unreported income for 2008 is, roughly, I  
15 don't know, \$4,000 less than it would otherwise be. So, it  
16 went from approximately \$10,000 to approximately \$6,000.

17           So, what's the Government's position about this  
18 materiality question?

19           MR. McMAHON: We disagree. We believe that the  
20 false statement in the tax return, which is what was charged  
21 here, is still material even with this lower number.

22           THE COURT: Okay. Well -- so, I'm going to agree  
23 with the Government on that. I think it is material in light  
24 of the overall amount of reported taxable income.

25           The reported taxable income -- I'm looking now at

1 the Government's chart that they provided in connection with  
2 their sentencing memo. If this is the wrong number, let me  
3 know now. But it says that, for 2008, the reported taxable  
4 income was roughly \$24,000 and the actual taxable income was  
5 roughly \$30,000, which is roughly 25 percent higher than the  
6 reported taxable income.

7 Am I getting those numbers correct?

8 MR. McMAHON: Yes.

9 THE COURT: And the 30,000 number is with the lower  
10 agreed upon amount for reimburse -- I'm sorry, for personal  
11 expenses that were paid for by the company.

12 So, I find -- I'm not sure that I have been asked  
13 to make this finding, but since this is a non-jury case, I  
14 think it's prudent for me to make a finding that that would  
15 not change my determination as to materiality. In other  
16 words, either way, the -- it's not just a question of actual  
17 dollars, it's a question of percentages.

18 So, the amount of adjustments, if you will,  
19 unreported income is roughly \$6,100, and that is approximately  
20 25 percent of the original reported taxable income amount,  
21 which means, to put it another way, he underreported his  
22 income by 25 percent, which is a substantial figure. If it  
23 was 2 percent, we might have a different conversation, but  
24 it's not 2 percent. It's in the nature of 25 percent or it's  
25 in the area of 25 percent.



1           So, I find that the -- I stand by my original  
2     determination that the evidence was sufficient to prove guilt  
3     beyond a reasonable doubt with respect to 2008 for all the  
4     reasons I said before, but with the slight amendment that even  
5     with this lower or the lower amount, it's still a material, a  
6     material amount of money that was unreported.

7           Okay. So, doing the math quickly, it looks like the  
8     total unreported amounts that I have just listed add up to  
9     \$97,252, and according to the Government, this results in a  
10    tax loss or tax losses I should say as follows:

11           For 2006, the tax loss is \$14,308. For 2007, it's  
12    \$15,563. 2008, it's \$2,025. In 2009, it's \$6,947.

13           That's the Government's calculations using the  
14    alternative method of calculating tax loss under the  
15    Guidelines. We all know that there is the 28 percent  
16    calculation, that's sort of a default calculation unless -- as  
17    the Guidelines say in Section 2T1.1, Note A, it says, "unless  
18    a more accurate determination of the tax loss can be made."

19           So, that's, that's what the Government is doing,  
20    and, in fact, Mr. Meringolo also submitted a calculation of  
21    tax loss under this alternative approach. In any event,  
22    these figures represent combined tax loss for federal, state  
23    and New York City income taxes for these years, all of which  
24    are properly included for sentencing purposes under U.S.  
25    against Fitzgerald, 232 F.3d 315 (Second Circuit 2000).

1 I don't think you are disagreeing that federal,  
2 state and local taxes are all considered; is that correct?

3 MR. MERINGOLO: That is correct, Your Honor.

4 THE COURT: All right. So, the total tax loss for  
5 sentencing purposes for the three years of conviction --  
6 counts of conviction, plus the one additional year in which I  
7 believe that the false tax return was relevant conduct, the  
8 total tax loss is \$38,843. Under 2T4.1, the Base Offense  
9 Level is 14.

10 The Defendant has contested whether acquitted  
11 conduct should be taken into account, as well as whether the  
12 2006 -- excuse me, as well as the 2006 conduct should be taken  
13 into account. I have largely, but not completely, obviously,  
14 ruled in the Defendant's favor on these matters.

15 So far as I can tell, the Defendant is not  
16 contesting the accuracy of the Government's calculation of tax  
17 loss as to the items I have specifically said are included in  
18 relevant conduct except to the extent perhaps of saying that  
19 the Government's numbers are too low. Because your  
20 accountant's calculation of the actual tax loss -- I'm not  
21 talking about the 28 percent figure, I'm talking about the  
22 actual calculation of tax loss -- is actually slightly higher  
23 than the Government's. Am I right about that?

24 MR. MERINGOLO: That is correct, Your Honor.

25 THE COURT: So, you couldn't very well complain

1     that the Government's numbers are wrong in that sense.

2             MR. MERINGOLO: Absolutely not, Your Honor.

3             THE COURT: All right. Mr. Livorsi, is that his  
4     name, your accountant?

5             MR. MERINGOLO: Yes, Your Honor.

6             THE COURT: Okay. His calculation for '07, '08 and  
7     '09 totaled approximately \$26,000, but, of course, that did  
8     not include 2006, which involved more than \$30,000 of  
9     unreported income.

10            I believe you attached the 2006 amended returns to  
11     your memorandum, and when you include the additional taxes  
12     owed for 2006, there is no question that the total tax loss,  
13     including 2006 -- I know you don't agree that it should be  
14     included, but if you do include it, the total tax loss clearly  
15     exceeds \$30,000.

16            MR. MERINGOLO: That is correct.

17            THE COURT: Would you agree with that?

18            MR. MERINGOLO: We agree, Your Honor.

19            THE COURT: So, if it exceeds \$30,000, then there's  
20     no question that the Base Offense Level is 14 no matter which  
21     calculation you use.

22            MR. MERINGOLO: Correct.

23            THE COURT: All right. Now, there is some  
24     additional items that I need to resolve.

25            The Government is seeking a two-level upward

1 adjustment under 2T1.1(b) (1) on the theory that Mr. Libous  
2 failed to report income exceeding \$10,000 from criminal  
3 activity for each of the years '09, '10 and '11. The  
4 Government contends that the payment by WCS of Mr. Libous's  
5 personal expenses in each of these years constituted fraud  
6 against WCS or theft. They sort of used the words  
7 interchangeably. There is, of course, a difference between  
8 fraud and theft, but, in any event, fraud or a theft against  
9 WCS. That application is denied for the following reasons:

10 First, Mr. Libous was not charged, let alone  
11 convicted, of defrauding WCS or stealing money from WCS. It  
12 seems that the Government not only wants me to punish the  
13 Defendant on the tax counts, which it lost at trial, it also  
14 wants me to punish the Defendant on a complex and fact-  
15 intensive fraud theory that it never presented to the grand  
16 jury or at trial. At least, I'm not aware that they presented  
17 it to the grand jury.

18 Moreover, the evidence at trial does not support the  
19 conclusion that Mr. Libous hid his conduct from WCS or lied to  
20 others at WCS or otherwise acted with criminal intent -- and  
21 that's the most important part of this -- as to WCS in  
22 arranging for his personal expenses to be paid by WCS.  
23 I believe the way I put it at trial was that there were no  
24 badges of fraud typical or you might see in a case like this.

25 But I would also note that when Mr. Boemio, the

1 majority partner of WCS, learned in 2011 that Libous was  
2 running his personal expenses through WCS, he didn't fire  
3 Libous or sue Libous or report him to the police; instead, he  
4 told him to take a raise. In other words, he said, "look, you  
5 can keep the money and you can continue to take that level of  
6 compensation, just do it in the form of a higher salary."

7 Even when Boemio later learned that the raise  
8 Libous paid himself was larger than expected, which upset him,  
9 he did not demand the money back or fire Libous, he just sold  
10 the company to Libous.

11 On these facts, there is zero chance -- not slightly  
12 more than zero, but actually zero chance -- that Libous would  
13 ever be convicted of fraud or embezzlement, even if for some  
14 reason the Constitution was changed and the standard of proof  
15 was lower than beyond a reasonable doubt. Presumably, that's  
16 why he was not charged with these offenses. In any event, I  
17 find that the Government cannot prove by a preponderance of  
18 the evidence that Libous failed to report income exceeding  
19 \$10,000 from criminal activity, that's the issue.

20 This is a tax case and not a theft case, and the  
21 exact amount of tax loss resulting from the offenses of  
22 conviction has been determined. The base offense level  
23 corresponding to that tax loss amount establishes a sentencing  
24 range that involves imprisonment. There is no reason to  
25 believe that the tax loss in this case understates the

1 Defendant's culpability or the seriousness of the offense.  
2 Therefore, there is no need to unduly complicate this  
3 proceeding with a difficult and time-consuming hearing as to  
4 intent to defraud or to steal, and I decline to do so.

5 Next, the Government is seeking a two-level upward  
6 adjustment for abuse of position of trust under Section 3B1.3.  
7 That application is also denied for essentially the same  
8 reasons I denied the two-level enhancement for criminally  
9 derived proceeds.

10 Again, this is a tax case. It's a serious matter,  
11 but that's what it is. It's a tax case. Mr. Libous was not  
12 charged with defrauding or otherwise harming his employer,  
13 WCS. When Boemio found out what Libous was doing, he told  
14 him to take a raise. It's arguably an unusual response, but  
15 that was his response.

16 There certainly is insufficient evidence that Libous  
17 stole money from WCS. The crime of conviction was filing  
18 false tax returns. His alleged theft of WCS funds was  
19 therefore not part and parcel of the crime of conviction. If  
20 it was a crime, it was an entirely different crime, and as I  
21 have said, I don't believe the Government has proven intent  
22 to defraud WCS or intent to steal from WCS.

23 Under these facts, it has not been established that  
24 WCS was a victim or that Libous, in fact, abused the position  
25 of trust that he occupied.

1           All right. I'm going to address an issue now which  
2 is not strictly speaking an aspect of the Guidelines  
3 calculation, but I don't know where else to fit it in, so  
4 let me talk about that now.

5           The Government contends that Mr. Libous deliberately  
6 doctored a urine sample that he provided to the Probation  
7 officer, at the time of his presentence interview, in order to  
8 conceal the fact that he had used marijuana. The Government's  
9 theory is that the test showed a "low creatinine level," which  
10 must be because the Defendant diluted the sample by consuming  
11 large quantities of fluids, such as water, shortly before  
12 providing the sample.

13           Of course, the Defendant could have consumed large  
14 quantities of water for other reasons, in other words, other  
15 than to deliberately dilute the sample, such as being thirsty,  
16 and even if he did consume large quantities of water, that  
17 doesn't come close to proving that he did so with the intent  
18 to dilute the sample or, as the Government acknowledges, the  
19 lab could have made a mistake.

20           In any event, Mr. Libous has never tested positive  
21 for drugs during the course of this case, including on the day  
22 in question. This is a non-issue, it's inconclusive, and, in  
23 any event, I find under Rule 32(i)(3)(B) that a resolution of  
24 this dispute will not affect sentencing.

25           I would also -- I don't know if anyone else noticed

1 the irony of this, but it is somewhat ironic that the  
2 Government has made such a fuss about this matter or about a  
3 matter that has absolutely nothing to do with the crime of  
4 conviction and it did so in its brief one paragraph after  
5 arguing in its sentencing memorandum that the Defendant's  
6 sentencing memorandum failed to focus on the crime of  
7 conviction. I find that ironic.

8 In other words, the Government is saying, "Judge,  
9 don't give credence to the Defendant's sentencing memorandum  
10 because it just focuses on things other than the crime of  
11 conviction," and in the very next breath, the Government  
12 focuses on something other than the crime of conviction. If  
13 anything, the Government's fixation on this issue, including  
14 in its most recent letter from May 15th, tends to dilute --  
15 and there is no pun intended there -- its much stronger  
16 arguments about the seriousness of the offense.

17 The next issue is acceptance of responsibility, and  
18 the Defendant contends he is entitled to a two-level downward  
19 adjustment for acceptance of responsibility under 3E1.1. This  
20 is certainly not one of those rare instances in which someone  
21 goes to trial and can still obtain a two-level downward  
22 adjustment for acceptance of responsibility. The bottom line  
23 is that the Defendant has not clearly demonstrated acceptance  
24 of responsibility for his offense, and, therefore, I deny that  
25 request.



1           First of all, the Defendant has not admitted the  
2   conduct comprising the offenses of conviction, because he has  
3   not admitted that he willfully filed false tax returns for  
4   '07, '08 and '09, or that he willfully filed a false tax  
5   return for 2006. He admitted that the returns were false, but  
6   this entire criminal case was about willfulness and he  
7   certainly hasn't admitted that he acted willfully. He is not  
8   required to admit that, but the bottom line is he has not.

9           Second, although a conviction at trial does not  
10   automatically preclude consideration of this reduction, the  
11   fact that he did put the Government to its burden of proof at  
12   trial, as it was his right to do -- the fact is that he did  
13   put the Government to its burden of proof at trial, as it was  
14   his right to do. It's not as if he went to trial solely to  
15   preserve issues for appeal that do not relate to guilt, such  
16   as a constitutional challenge to a search or a challenge to a  
17   statute's applicability in this case.

18           It's true that the Defendant filed amended returns  
19   and paid back taxes for the years of which he was convicted,  
20   but he did that after trial, not before. The bottom line is  
21   that this is not one of those rare cases, as I said a moment  
22   ago, in which a defendant should get acceptance points even  
23   after going to trial. The Defendant's request for a downward  
24   adjustment under 3E1.1 is denied.

25           All right. As far as this -- the Court's Guidelines

1 calculation is concerned, the Base Offense Level is 14. There  
2 are no upward or downward adjustments. The Criminal History  
3 Category is I, because the Defendant has zero criminal history  
4 points. And, so, I find that at Level 14, Criminal History  
5 Category I, the sentencing range is 15 to 21 months  
6 imprisonment. The supervised release range is up to one year,  
7 and the fine range is \$4,000 to \$77,686. It's an odd number  
8 because that's twice the amount of the gross loss. So, that's  
9 the fine range under the Guidelines.

10 Now, the Defendant has moved for a number of  
11 Guidelines-based departures. Actually, the sentencing memo  
12 sort of combines departures and variances into the same boat,  
13 but I need to address, because I'm required to do so,  
14 departure motions. So, I'm going to discuss the motions for  
15 departure now, which leaves open a discussion of some of these  
16 things, at least, with respect to whether the Court should  
17 vary from the Guidelines. That's a different question. It's  
18 a question that's hard for the public to understand the  
19 distinction, but the lawyers here know the distinction. So,  
20 let me, let me address the motions for a downward departure.

21 First, Defendant contends that because the tax  
22 Guidelines -- the Government -- I'm sorry.

23 The Defendant moves for a downward departure because  
24 the tax Guidelines' focus on loss overstates the severity of  
25 the offense. That's the theory there. That application is

1     denied. The 15 to 21 months sentencing range here, based on  
2     the tax loss figure of approximately \$38,000, certainly does  
3     not overstate the seriousness of the offense. Cheating on  
4     one's taxes is a serious offense, obviously. The cases cited  
5     by the Defendant in his brief involve sentencing ranges in  
6     excess of 30 years or even up to life imprisonment. Here, the  
7     range is 15 to 21 months based solely on loss. That range  
8     plainly does not overstate the seriousness of the offense.

9             The second departure motion is the Defendant's  
10    motion for departure based on family ties and responsibilities  
11    under Section 5H1.6. That application is also denied. Mr.  
12    Libous's family circumstances are actually quite ordinary and  
13    unexceptional or -- strike that. They are actually quite  
14    ordinary and unexceptional. They are not extraordinary or  
15    exceptional.

16            In four-plus years on the bench, I have yet to  
17    sentence a defendant who did not have a close -- who did not  
18    have close family ties or whose family would not suffer if he  
19    or she were incarcerated.

20            I have no doubt the Libous family, including the  
21    Defendant's parents, his wife and child, would suffer both  
22    emotionally and financially if he were incarcerated. Again,  
23    this unfortunately is an ordinary and routine consequence that  
24    befalls a family when a loved one decides to engage in not  
25    only unlawful but criminal conduct and gets caught doing so.

1           However, as I said, this is certainly a relevant  
2 factor in determining the ultimate sentence, so I will  
3 consider his family circumstances under 3553(a) in deciding  
4 what sentence to impose.

5           The third motion is a motion for departure based on  
6 the impact his incarceration would have on his business and  
7 employees. What I will call a Milikowsky departure. It's a  
8 Second Circuit case. It's a pre-Booker case, sort of a court-  
9 created doctrine, if you will, but, in any event, pre-Booker.  
10 That application is denied because the Defendant has not  
11 established that his incarceration would impose extraordinary  
12 hardship on employees. Hardship, no question about that, yes,  
13 but extraordinary hardship, no.

14           Mr. Libous has presented no evidence that he is the  
15 only person who can keep Wireless Construction Solutions  
16 running. I have no doubt that, if necessary, both Mr.  
17 Libous's brother and his wife, both of whom work for WCS, can  
18 step up on a temporary basis and keep the business going in  
19 the event Mr. Libous is sentenced to jail or Mr. Libous can  
20 promote someone from within the company. There is, I'm told,  
21 17 to 25 employees. Surely there's -- there is certainly no  
22 evidence that none of those employees can temporarily take  
23 over the day-to-day operations of the business. Mr. Libous  
24 could also hire someone from outside the company to step in  
25 and run the business temporarily in his absence. So, there is

1 nothing extraordinary about these circumstances, but, again,  
2 I will consider them, as I'm required to do, under Section  
3 3553(a).

4 Finally, there is a motion for a downward departure  
5 based on charitable service and other good works under  
6 Section 5H1.11. That application is denied. Mr. Libous's  
7 involvement in his church and its good works is admirable and  
8 he deserves credit for that, but there is nothing  
9 extraordinary about what he does for the church and its  
10 members or the public that it serves or in what he does for  
11 the community. It's admirable, as I said, but it's not  
12 extraordinary and it doesn't warrant a downward departure.  
13 Again, I will consider his charitable service and good works  
14 in determining an appropriate sentence under Section 3553(a).

15 All right. I think that resolves the Guidelines  
16 calculations and the Guidelines-based departure motions.  
17 Although, as I said, I am not foreclosing consideration of  
18 some of those factors in making the ultimate determination  
19 of what sentence to impose that is sufficient but not greater  
20 than necessary to comply with the purposes of 3553(a). So,  
21 we will address that.

22 Have I left off any Guidelines disputes?

23 I'm not talking about 3553(a) now. I'm talking  
24 about Guidelines issues.

25 MR. McMAHON: No. I think that's it, Judge.

1 MR. MERINGOLO: No, Your Honor.

2 THE COURT: All right. Thank you. Does the  
3 Government wish to be heard on sentencing?

4 MR. McMAHON: Yes, we do, Your Honor.

5 THE COURT: Okay.

6 MR. McMAHON: Judge, there's just a couple of  
7 things. You know, Your Honor has already noted that we have  
8 put in 62 pages and if we didn't say it there, it may not be  
9 worth saying. So, I would just like to highlight a couple of  
10 things here.

11 First of all, in sentencing this Defendant, you have  
12 to consider that this is a man who really has demonstrated a  
13 shocking lack of respect for the law despite the fact that he  
14 was an attorney during the entire period of the offense  
15 conduct and that continues to this day. For example, even  
16 though he has admitted civil liability for his taxes in 2010  
17 and 2011, he has failed to pay them, even though he knew that  
18 he was going to be facing sentencing here today, and he has  
19 offered a number of excuses -- some of which border on the  
20 ridiculous -- for that.

21 THE COURT: And how about the excuse of: "I'm going  
22 to pay them. I just need to -- this is not a year for which  
23 I have been convicted and I just need to hear from the IRS  
24 what they think I owe, so I don't over-pay, like I did for  
25 the other years"?

1 MR. McMAHON: Well, I think --

2 THE COURT: That's -- that doesn't seem crazy to me.  
3 I mean he is saying he wants -- he hasn't paid yet, that's  
4 true, on that point you are right, but to say that there is  
5 no possible explanation for -- no legitimate explanation for  
6 that, I'm not sure I agree.

7 MR. McMAHON: He has all the -- Judge, I have to  
8 disagree with that. He has all of the information that he  
9 needs. It was given to him in discovery. He has got his bank  
10 records, his credit card records. He knows what we contend  
11 criminally is a loss. He has got professional help. He has  
12 got a personal accountant. He has got a lawyer who can help  
13 him put it all together.

14 THE COURT: But he also was acquitted of those  
15 years. I know you don't agree with that decision. I'm --  
16 believe me, it's clear, but he was not found guilty.

17 MR. McMAHON: Right. Well --

18 THE COURT: That makes those years different than  
19 the other years, it just does.

20 MR. McMAHON: But it's --

21 THE COURT: It's just like any other criminal case  
22 where you are convicted of something -- let's make it simpler.

23 Let's say you are convicted of stealing a thousand  
24 dollars from somebody, and it comes to sentencing and it turns  
25 out that you could have paid the thousand dollars back, but

1     you didn't. All right. Now, maybe you got a point there.  
2     But let's say you are charged with stealing a thousand dollars  
3     from one person and 2000 from another person. You go to  
4     trial. You are convicted on the thousand, but you are not  
5     convicted on the 2000. Let's just assume that for a moment.

6             MR. McMAHON: Mm-hmm.

7             THE COURT: Is the person supposed to pay the 2000  
8     anyway?

9             I mean, I really don't -- I understand the  
10    difference here is that you believe that he did steal the 2000  
11    from the other person, to use my hypothetical, but the bottom  
12    line is, he wasn't convicted of that.

13            MR. McMAHON: Can I --

14            THE COURT: So, isn't that a reason not to pay it?

15            MR. McMAHON: Yes.

16            THE COURT: Although he said that he is going to  
17    pay it and he has never suggested for a moment that he doesn't  
18    owe it. I'm just trying to figure out why you think it's so  
19    outrageous that he hasn't paid it, that's my point.

20            MR. McMAHON: Well, because -- Your Honor, let me  
21    change your hypothetical just a bit.

22            Let's say that the acquitted \$1,000 was also the  
23    subject of a civil judgment. The Defendant would then have a  
24    legal duty to pay that judgment. That's exactly what's  
25    happening here and yet he is not doing that.



1           THE COURT: And how is it the subject of a civil  
2 judgment, the acquitted --

3           MR. McMAHON: Well, it's -- I'm using an analogy  
4 here. There is no dispute that he owes those taxes.

5           THE COURT: But he hasn't been -- there is no  
6 judgment. There is a sort of a metaphysical lack -- it's --  
7 but I mean the point is -- I mean it's -- the funny thing is,  
8 I don't disagree with you, I just think you are pressing the  
9 gas pedal a little bit too hard on this one.

10           If Mr. Libous wanted to demonstrate extraordinary  
11 rehabilitation or an extraordinary level of contrition, then  
12 one way that he could do that would be that he could say,  
13 "you know what, even though I don't have the exact numbers --  
14 no question that I owe the money. I acknowledge I owe the  
15 money. So, I have paid the money, and if it turns out they  
16 have to write me a refund check, fine, they can write me a  
17 refund check, but I'm trying to show you Judge how contrite I  
18 am for what happened." And if he had done that, it would have  
19 benefited him, I think it's fair to say. I will tell you that  
20 right now, that would have been a benefit to him.

21           In other words, he would have been better off in my  
22 eyes if he had done that as opposed to not doing that. So, in  
23 that sense, you and I are not in disagreement. But what I  
24 don't agree with you on, that is, is your argument that his  
25 failure to do so should be held against him in some way.

1 That's the part I'm not sure I agree with.

2 I would give him credit for it if he did it, but I  
3 just find it hard to hold against someone the failure -- I'll  
4 use the term loosely -- to make restitution for a crime that  
5 he didn't commit. He was found not guilty. He is presumed  
6 innocent. The Government didn't prove -- didn't carry its  
7 burden.

8 MR. McMAHON: It's --

9 THE COURT: He could have paid it and he might have  
10 helped himself if he had, but failing to pay it, I'm not quite  
11 ready to go so far as to say that that should cut against  
12 him --

13 MR. McMAHON: But it's not --

14 THE COURT: -- or count against him.

15 MR. McMAHON: It's not like restitution, Judge. And  
16 the difference between restitution and what's happening here  
17 is that here we have a Defendant who has repeatedly, over the  
18 period of two or three years, depending on how you count it,  
19 ignored what is to him a known legal duty to file his tax  
20 returns or amend his tax returns to make them accurate and pay  
21 his taxes, and that's what he hasn't done here, and that's the  
22 difference. He has, essentially, if you will, blown off his  
23 acknowledged legal duty.

24 THE COURT: See, I don't think he has blown it off.  
25 I think he has put it on hold for the moment, which I hope it

1 doesn't mean that he has blown it off. I -- certainly, based  
2 on his financial statement, he seems like he is capable of  
3 paying those taxes, and if I were him, I would have paid them  
4 already. That's what I would have done.

5           If I were him, I would have said, "you know what,  
6 Mr. Meringolo, you are a great lawyer but just where do I send  
7 the check? Let me send the check. We gotta send the check  
8 eventually, let's just send it now. If I over-pay it, fine,  
9 we'll get the money back later on." He would have been better  
10 off if he had done that. What I'm -- and I'm not going to  
11 belabor this point any further. I disagree with you that he  
12 should be held -- that he should be treated worse because he  
13 failed to do that. He just can't -- he shouldn't be treated  
14 better. It's kinda of like -- it's almost similar to the  
15 acceptance of responsibility.

16           You know, look, somebody -- no one is going to get  
17 punished for exercising your constitutional right to go to  
18 trial. You could be as guilty as guilty can be. You have a  
19 constitutional right to a trial, and if you go to trial, you  
20 are not going to be punished for exercising your  
21 constitutional right. The flip side of that is, if you do  
22 plead guilty, you are going to get rewarded for that.

23           So, there is a reward for pleading guilty, it's  
24 called acceptance of responsibility under the Guidelines, but  
25 there is no penalty for failing to plead guilty. And I --

1    this is not quite the same, but I -- conceptually, it seems  
2    very similar to me here, is that you are sort of turning it  
3    around on itself and you are saying that he should be  
4    penalized for failing to plead guilty; not literally plead  
5    guilty, I get that, but for failing to do something that he  
6    could have done vis-a-vis those later years. We have  
7    discussed it enough. Move on to something else.

8           MR. McMAHON: All right. All right. Judge, I think  
9    also you have to look at -- again, this is not a situation  
10   where the Defendant has simply done nothing more than  
11   exercised his legal right to go to trial or exercised his  
12   legal right to have -- to put us to our burden of proof either  
13   at trial or today at sentencing; he has gone beyond that, and  
14   what he has done in his sentencing memo is try to shift the  
15   blame to other people, or he has tried to say, "oh, this is  
16   all the result of mistakes or confusion," and that, for  
17   example, his 2006 conduct was an isolated mistake, and that's  
18   not what happened here.

19           As the Court has already found --

20           THE COURT: Could you tell me where he says that in  
21   his -- you've said that, but -- and you have said that in your  
22   brief. Tell me where exactly in Mr. Meringolo's memo, where  
23   he says, "my client, my client has an excuse or an explanation  
24   here. This is all about what other people did, it's not him  
25   and he is not responsible for this." I'm just curious where

1 he says that.

2 MR. McMAHON: If you, if you want, I can go through  
3 it and find it.

4 THE COURT: Well, because I don't think it says  
5 that, you see. Does he, does he say that there was sloppy  
6 recordkeeping, that there was -- there were people at the  
7 company who didn't know what they were doing, including Mr.  
8 Marino, obviously?

9 That's true. That's all true. But at the same  
10 time, he I don't think says, you know, "Judge, you ought to go  
11 easy on me because the years for which I was convicted,  
12 really, that wasn't my fault."

13 Some of the people that wrote letters on his behalf  
14 did say that and they are flat-out wrong. Of course it was  
15 his fault and it's ridiculous to say otherwise. But, see, I  
16 don't think he says that, and maybe you are confusing what  
17 some of his letter writers said with what Mr. Meringolo said.

18 I suppose you can argue that by enclosing letters  
19 which essentially say, "there is no way Matthew was guilty," I  
20 suppose you could make the argument that he is adopting that,  
21 and, therefore, he is saying, "I'm not guilty. I did nothing  
22 wrong. It's everybody else's fault, it's not me," but he  
23 doesn't really say that.

24 I would rather he hadn't attached those letters, or  
25 if he got letters like that, he might have said to the letter

1 writer, "you know what, the Judge isn't really going to like  
2 this, because the Judge thinks he is guilty. Regardless of  
3 what you think, the Judge thinks he is guilty on these, on  
4 these points."

5 MR. McMAHON: Judge, the quote -- when I put  
6 "confusion and mistakes" in quotes, I am quoting directly from  
7 the Defendant's brief.

8 THE COURT: But there were -- there was confusion  
9 and mistakes, clearly there were.

10 MR. McMAHON: But that's not -- that doesn't explain  
11 what the Defendant did here.

12 THE COURT: It doesn't --

13 MR. McMAHON: Your Honor has already found --

14 THE COURT: It doesn't, it doesn't excuse it, but  
15 it's true. I think there were clearly confusion and mistakes.

16 There's clearly -- there were -- again, I don't  
17 remember the minutia of the evidence, but, you know, untimely  
18 I suppose, but, you know, this information was available  
19 to/presented to the bookkeeper. What was her name? Ms.  
20 D'Abruzzo. It was presented to the CPA, the CPA.

21 Ms. D'Abruzzo is definitely not a CPA --

22 MR. McMAHON: Well, but Your Honor --

23 THE COURT: -- but Mr. Marino says he was. He  
24 didn't act like one. So, confusion, mistakes, yes, there were  
25 lots of them.

1           MR. McMAHON: Yes, with respect to 2010 and 2011,  
2   that's what Your Honor is talking about. But I'm talking  
3   about the years of conviction, 2007 through '09, and there  
4   were, there were no confusion there.

5           The Defendant's conduct didn't result from confusion  
6   or mistakes in 2007 through 2009. Your Honor has already  
7   found that. That's inherent in your verdicts for those  
8   counts, for those years, and yet the Defendant has been saying  
9   that, "look, this is all a problem I have taken care of. I  
10   have hired a new accountant at Wireless and this isn't going  
11   to happen again, Your Honor, because now I have an accountant  
12   who is going to handle this thing properly for me." And what  
13   he is saying there is that, "my conduct and what -- my crimes  
14   are all the result of mistakes and confusion."

15          THE COURT: See, again, I agree with you part of the  
16   way, but I think you are overstating it, what he says.

17          I mean, he does say that he has tried to correct for  
18   this by actually hiring a competent person to deal with these  
19   issues. I have seen this a million times and I know you have  
20   too, where people are really good at making money, sometimes  
21   hand over foot making money, they are not so good at the back  
22   office part of the business and it gets them in trouble.

23          And there is an element -- it's not black and white.  
24   There is an element of: "Well, if I just don't have somebody  
25   really good to kinda watch out for what I do, then maybe I can

1 get away with doing things that I really shouldn't be entitled  
2 to get away with." So, there is an incentive not to hire  
3 somebody good. There is an incentive to have, you know, the  
4 niece of, you know, somebody who is clearly incompetent, or if  
5 not incompetent, at least, not trained properly and not  
6 capable to, you know, to do it the right way. There is almost  
7 an incentive to do that, because then that makes it easier for  
8 you to say, "well, who knew? I didn't know I was supposed to  
9 do these things."

10 So, I mean, I go with you part of the way, but I  
11 don't think that what Mr. Meringolo said in his brief, or by  
12 extension what his client is saying, is that he is looking to  
13 excuse his conduct. He was found guilty.

14 This is a tax case. It's not a theft case, not an  
15 embezzlement case. It's a tax case. He underreported his  
16 income by a material amount. He did so for those three years  
17 knowing exactly what he was doing. I agree with all that. I  
18 agree with it. So, none of the -- none of the noise, to the  
19 extent there is any noise in there that suggests otherwise, I  
20 just reject that out-of-hand, but I don't -- I guess I just  
21 don't see it.

22 Unless you can quote me something and I can say,  
23 "mm-hmm, now that I see that again, I see that he is really,  
24 he is really minimizing his responsibility." Other than kind  
25 of saying, well, the tone -- it's really you are saying the



1 tone of the brief is that he is minimizing his responsibility,  
2 and I think you could make that argument. It's not a crazy  
3 argument.

4 MR. McMAHON: I'll adopt that argument, because Your  
5 Honor said you would accept it. But when I quoted those  
6 words, I was quoting directly from the brief --

7 THE COURT: Yes, but --

8 MR. McMAHON: -- and I don't have a cite. I can go  
9 through the 80 pages if Your Honor wants.

10 THE COURT: No. You had time to do it. The trial  
11 was over in January. You had plenty of time to do it.

12 By the way, just so you know, I adjourned this  
13 sentence without -- sentencing date without asking anyone  
14 because I received -- and I'm not saying that it's bad that  
15 you did this, Mr. Meringolo, but I received this 60-plus-page  
16 brief with -- I don't know -- 75 exhibits and -- a few days  
17 before the scheduled sentencing date and I just didn't have  
18 enough time to do it, because I have 250 other cases. So, you  
19 know, that's all it was. There was nothing complicated or  
20 nefarious about it. It was just that, "well, gee, I'm going  
21 to need more time to review this."

22 But you have had plenty of time to review it.

23 MR. McMAHON: I have. But, you know, I can give  
24 Your Honor one cite --

25 THE COURT: All right.

1           MR. McMAHON:  -- one citation, but it relates to the  
2   home office deduction, which Your Honor has already ruled is  
3   not relevant conduct.

4           THE COURT:  Right.

5           MR. McMAHON:  But in that case -- I didn't know that  
6   at the time I wrote it -- the Defendant wrote in his brief,  
7   "An isolated" --

8           THE COURT:  Give me a page number, please.

9           MR. McMAHON:  Page 20.

10          THE COURT:  Twenty.

11          MR. McMAHON:  "An isolated mistake in 2006 cannot be  
12   considered to be part of his subsequent series of transactions  
13   in later years," and that's the best quote I can find right  
14   now.  There are others as well that relate directly more to  
15   the conduct that Your Honor considered --

16          THE COURT:  Hold on one second.

17          Well, but it does kind of sound like an isolated  
18   mistake.  I mean, it's something that happened in 2006, which  
19   is a long time ago.  It has nothing to do with not reporting  
20   legal fees or fees for other services or taking out money from  
21   the company in the form of company-paid personal expenses.  
22   That's all in the nature of not reporting income.

23          This is different.  This is a deduction.  It's a  
24   one time event, apparently.  I mean, I didn't hear anything  
25   about it happening again.  That's the thing.  Let's say it

1 happened again. Let's say, in 2007, he did the same thing.  
2 One plus one equals a lot more than two when it comes to this  
3 kind of thing, which is why I thought that, for example, the  
4 2006 conduct in failing to report those fees was part of the  
5 same course of conduct, because it's the same thing that  
6 happened in '07, at least, and in '08 to some extent.

7 But here we do have a one time incident, and, you  
8 know, it says here, "An isolated mistake in 2006 cannot be  
9 considered to be part of his subsequent series of transactions  
10 in later years." I kinda -- I do agree with that. I don't  
11 think it is a part of his completely different transactions  
12 that he was convicted of in later years.

13 MR. McMAHON: Well, I guess the difference in our  
14 thinking is that to make that -- to get that home office  
15 deduction, he had to lie to his accountant to get it and lie  
16 on his tax return to get it, and that's exactly what he was  
17 charged with.

18 THE COURT: I hear you.

19 MR. McMAHON: But let me go ahead, thanks to Mr.  
20 Kameron, to Page 27 of the Defendant's brief. He found an  
21 additional example here.

22 THE COURT: Okay.

23 MR. McMAHON: And I'll -- I won't read -- unless you  
24 want me to --

25 THE COURT: Okay. What paragraph? Just give me --

1 MR. McMAHON: The first full paragraph.

2 THE COURT: Okay.

3 MR. McMAHON: So, the fifth line down.

4 THE COURT: I see it. Again, you know, that is a  
5 bit of a spin, I agree, but it's not really inconsistent with  
6 the defense at trial, and I'm reluctant to punish somebody for  
7 being, you know, or to pile on and make his sentence worse  
8 simply because he repeats part of his defense at the time of  
9 the sentencing memorandum.

10 He is not required at this point -- it might have  
11 helped him if he had actually admitted that his conduct was  
12 willful; that would have -- I think he might have gotten,  
13 might have gotten, not necessarily, might have gotten two  
14 levels off for acceptance of responsibility. But I think it's  
15 true that "the use of personal credit cards caused confusion  
16 on multiple levels." That's true. "Resulted in incorrect  
17 bookkeeping entries." It was his use of personal credit  
18 cards. He is not saying that it was somebody else's.

19 "My use of personal credit cards resulted in  
20 incorrect bookkeeping entries" -- that's correct -- "incorrect  
21 attribution on tax returns" -- he might have added, "which I  
22 knew about and should have corrected," but, nonetheless, it's  
23 true that it resulted in the incorrect attribution on tax  
24 returns -- "and insufficient payment of taxes."

25 So, again, I see your point, but to me, this is,

1     this is spin.  It's not, it's not quite as serious as you make  
2     it out to be, and it's really largely consistent with what his  
3     defense was at trial, so I'm not offended by it.  I rejected  
4     it at trial, but that doesn't mean I'm going to say, "I told  
5     you you were wrong, now I'm going to punish you even more for  
6     challenging my ruling by repeating what you said before."  I'm  
7     not going to do that.

8                 MR. McMAHON:  But that's not what I'm asking Your  
9     Honor to do.

10                What I'm asking Your Honor to do with respect to all  
11     of this, as well as the other conduct which Your Honor has not  
12     considered today, for example, the thefts -- what I contend  
13     are the thefts from Mr. Boemio, what I contend are the thefts  
14     from Mr. Blidy, this all goes to the history and  
15     characteristics of this Defendant under 3553(a), and therefore  
16     it is fair for the Court to consider it and the Court under  
17     3553(a) has to consider it.  And the reason why it's important  
18     here is because it goes to the risk of recidivism, among other  
19     things, in that the Defendant had made a big point that he is  
20     not going to be a recidivist and that the statistics of  
21     recidivism in tax cases are relatively low.  That's fine for  
22     statistics, but Your Honor has to consider this Defendant  
23     under these circumstances and the evidence that you have in  
24     front of you.

25                THE COURT:  All right.  Let me stop you right there.

1           You are entitled to make that argument. I'm not  
2   saying it's a frivolous argument. But, again, just take a  
3   breath for a second. Do you really think that there is a  
4   likelihood of recidivism for this Defendant, this Defendant?

5           MR. McMAHON: Based on everything I know about him,  
6   yes.

7           THE COURT: Okay. Fair enough. That's your  
8   position. What else do you have?

9           MR. McMAHON: That's it, Your Honor. Unless you  
10   have any questions, I'll --

11          THE COURT: No. As you can see, I already had a  
12   bunch of questions. I don't want to make it -- I mean, I have  
13   read what you have submitted. By the way, the briefing was  
14   excellent. I'm not criticizing it. It was a little bit long,  
15   but there was nothing wrong with it, and I appreciate the fact  
16   that both of you are doing your utmost to represent your  
17   respective clients and your positions in the case.

18          Okay. Thank you, Mr. McMahan.

19          Mr. Meringolo, do you wish to be heard?

20          MR. MERINGOLO: Yes, Your Honor. Your Honor, my  
21   client is requesting the Court go with the recommendation by  
22   Probation and issue a non-incarceratory sentence. He stands  
23   before this Court. He is 37-years-old.

24          Your Honor, when the first subpoena -- when he first  
25   was approached by the Government in 2010, he went. As the

1 individual testified, he was forthright. Throughout this  
2 trial, everyone testified that he was a decent man and he is a  
3 decent man despite what the Government says.

4 The evidence regarding that issue, as a 32-year-old  
5 man and now he is 37, it was five years. This investigation  
6 was five years, Your Honor. We complied with every subpoena.  
7 We gave the Government everything. In our opinion, during  
8 that period of time, we had nothing to hide.

9 He is guilty of the three charges in this case. We  
10 accept it. He accepts the Court's ruling. He has paid back  
11 the money. He has actually paid more than what he owes, which  
12 he will get a return.

13 In 2010 and 2011, I understand the Government's  
14 arguments and I understand that it would have been more  
15 appropriate just to write the check. Meeting with the  
16 accountant regarding those two years, it's going to be  
17 substantially less than what was presented at trial than what  
18 in fact it was, and maybe it is my fault for him not writing  
19 the check, but he --

20 THE COURT: I'm not holding it against you.

21 MR. MERINGOLO: No. I understand that.

22 THE COURT: I think I made that crystal clear.

23 MR. MERINGOLO: No. I understand, Your Honor.

24 THE COURT: So you don't really have to fight that  
25 point.

1           MR. MERINGOLO: Looking back, if I had another case  
2 like this and the gentleman had the money, I would make him  
3 write the check. There is no doubt about it. But it's not  
4 what the Government contends the loss is for 2010 and 2011.  
5 We have been waiting for the IRS to get back to us. The  
6 accountant has been in touch with the IRS to get a specific  
7 number, and he is going -- as soon as he gets that number, he  
8 is going to pay the number. So, he is not saying, "I'm not  
9 paying the IRS." He has in fact paid three years, even he  
10 paid '06 also before the sentencing date.

11           So, I don't believe, Your Honor, at -- one, that the  
12 Government, you know, even though that's their argument, this  
13 individual has accepted responsibility. He has paid what he  
14 has paid and he intends to pay even more.

15           THE COURT: Let me just say, Mr. Meringolo,  
16 acceptance of responsibility, while theoretically applicable  
17 to someone who goes to trial, putting the Government's burden  
18 of proof -- putting the Government through its burden of  
19 proof, is possible. In other words, it's possible to get  
20 that. The Guidelines do say that.

21           I have been doing this now, as a prosecutor, defense  
22 lawyer and Judge, for 26 years. I haven't seen it happen  
23 once. I guess it's possible, but I haven't seen it happen  
24 once, and the reason is that you get credit for true  
25 acceptance of responsibility. You get a reward for pleading



1 guilty. You don't have to plead guilty. I'm not saying you  
2 have to plead guilty, but you do get rewarded for that.  
3 That's the way we operate. It's the tradition that we have  
4 operated under for several hundred years. It's the way we do  
5 things. But he didn't, he didn't do that here. He opted to  
6 go to trial, his absolute right. I'm not criticizing him for  
7 that, but I'm not going to reward him now for saying, "well,  
8 okay, I paid my taxes. I'm trying to do the best that I can."

9 I mean, I'm going to -- it's relevant. I'm not  
10 saying it's not relevant. It is relevant, it is relevant.  
11 So, everything you are saying is relevant, but it's not enough  
12 to get acceptance of responsibility points.

13 So, if you are using the term acceptance of  
14 responsibility in sort of a nontechnical way, in other words,  
15 you are saying, "well, putting aside the question of whether  
16 he gets two points under 3E1.1" -- is that right -- "3E1.1,  
17 just generically, he is accepting responsibility by doing what  
18 he is doing now," and you are welcome to make that argument,  
19 but I'm not going to change my position on the two points.

20 MR. MERINGOLO: I'm not asking you to. I just was  
21 saying it in theory of him paying the taxes, that he is not  
22 running from paying anything.

23 The two other things that I'll -- I know the brief  
24 was very long and I know Your Honor has read the brief. So  
25 I'm just going to --

1           THE COURT: I'm not being critical of you for that,  
2 just so --

3           MR. MERINGOLO: No, no. I understand. I mean, I  
4 don't want to reiterate everything and waste everyone's time.

5           THE COURT: All right.

6           MR. MERINGOLO: But I think when we are going to  
7 sentence my client, I think if we look at his entire family  
8 circumstances, preparing for the trial, a week before the  
9 trial he loses his aunt. During the trial, he loses his  
10 grandmother. His father is terminally ill. I mean there's --  
11 you know, there's no way of his father making a rebound and  
12 living the next twenty years. He is bedridden in Florida  
13 right now.

14          THE COURT: I noticed he is not here. So, is that  
15 why?

16          MR. MERINGOLO: He could not make the trip. He had  
17 a very extensive operation. As of this morning, he was  
18 feeling good. His mother is by his side.

19          So, Mr. Libous, you know, this isn't a large family.  
20 He is, in essence, the man of the family now. He has a  
21 brother and he also has a wife who is in the courtroom with  
22 many of his friends from the church, college friends, and  
23 lifelong friends. You know, to say that this man is going to  
24 come back and commit more crimes I think, you know, in my  
25 opinion -- and I've been doing it quite, quite a while -- I

1     don't believe that he is, and I think now he has a one-year-  
2     old son. His son was one last week.

3             And I think when you look at the conduct, even the  
4     conduct that was charged, you know, 2010 and 2011, but then  
5     you look at what Mr. Libous has done after that: He met his  
6     wife. He got married. He has a kid. He is not with Mr.  
7     Boemio. He is not with Mr. Marino. He has changed his life  
8     and I think that's, that's evident. It's -- that's clear.  
9     The evidence is there that he has changed his life.

10            He is not looking to commit crimes anymore. He has  
11     a one-year-old son. I'm sure he hopes that he has other  
12     children. And just when you look at all of that and what he  
13     does with the community, and some of those letters were really  
14     compelling, Your Honor, on how he would help people, and he is  
15     doing great financially with this company that he built. He  
16     is doing great, but he is not only giving money, he spends  
17     time. He meets people, he helps people, and, you know, I  
18     don't know him. I know him for the last five years and I've  
19     seen time and time again that he has helped people, you know,  
20     and I just think that should be -- that should be taken into  
21     consideration.

22            And I know the Guidelines is 15 to 21 months, but  
23     I'm respectfully requesting the Court give him a time served  
24     sentence. I'm of the hope that he will not be back. He can  
25     deal with his family issues and he can help his company, who

1 has in between 17 and 25 employees relying on him, and I think  
2 that that's indicative of what we request from the defense.  
3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Meringolo, and let me  
5 just say again that I -- I think I said this at the trial, but  
6 I do appreciate the excellent lawyering in this case.

7 I will say that sometimes, you know, of course,  
8 these things can get emotional and stressful, and sometimes  
9 people could take extreme positions, but I'm not offended by  
10 it. I think that the lawyers in this case have done a  
11 terrific job on both sides. So, let me say that before we go  
12 any further.

13 Mr. Libous, do you have anything you would like to  
14 say or any information you would like to present before I  
15 impose sentence?

16 THE DEFENDANT: Yes, Your Honor. Your Honor, I'm  
17 here because of my actions and nobody else's, and, and I'm  
18 sorry to you and I thank you for your time, thanks for the  
19 rest of the Court's time. I'm sorry. I'm sorry as far as  
20 being -- I was an attorney, you know. I'm sorry that I wasn't  
21 more careful. I'm sorry I didn't, you know, claim those fees.  
22 I'm sorry. I should've, I should've done better. Mostly, I  
23 mean --

24 THE COURT: Take your time. It's all right.

25 THE DEFENDANT: I mean it's -- I can't tell Your

1 Honor how --

2 THE COURT: You can turn around.

3 THE DEFENDANT: No. I mean I can't, I can't look at  
4 the people here.

5 THE COURT: Okay. I get it.

6 THE DEFENDANT: I mean, I can hear the Government  
7 say the worst things about me and it doesn't affect me, but I  
8 just see the people behind me and see how much they love me  
9 and support me and that's what, that's what gets me.

10 I mean the people that are right in front of you,  
11 they are related to me, and they supported my wife. They  
12 supported me. I mean, when this was all going on, I mean I  
13 was upfront with my wife on what was happening. She didn't  
14 know anything and she still chose me, you know, over the  
15 circumstance, and I just think it's, it's just like God has  
16 put me in this position now where I'm being able to be used as  
17 a vessel. I'm not looking out for myself anymore. I look out  
18 for -- this has been going on for the past four years now.  
19 When it's given to me, I give, and what it means is, you know,  
20 I'm a follower of Jesus like, you know. For the last four  
21 years, I tried to live my life like he would. It's hard, it's  
22 not easy.

23 He says to love everybody. He doesn't say you have  
24 to like everybody, but I do my best to love everyone, and  
25 especially my family. And just to think like my son, who

1 wasn't even a thought when all this went on, is now going to  
2 possibly not have his father, that's, that's the hardest thing  
3 for me to accept, it's like -- you know. And, again, it's my  
4 fault, so I have no one to blame.

5 I just -- I truly am sorry. I really am. I'm sorry  
6 for -- to bring everyone, the people who love me, to bring  
7 them through this, because I know they feel pain too. They  
8 see what it's doing. You know, it's stressful, as you know.  
9 I mean, it's just a very stressful situation. This has been  
10 going on for five years. At the same time, it's, it's  
11 really -- it's a major relief to be in front of you right now  
12 just to know that it's over, and whatever my journey is from  
13 here on out, I mean, I'm going to accept it. I'm under your  
14 authority and I accept it. I just -- I just want everybody  
15 here to know how sorry and how thankful I am.

16 THE COURT: Okay. Have a seat. And, again, let me  
17 just apologize to you for adjourning the sentence, because I  
18 know from personal experience that people in your position are  
19 focussed on a particular date as being the date on which they  
20 hope something good is going to happen, but they really just  
21 want it to be over one way or the other, and I did not lightly  
22 adjourn the sentence, but I didn't think it was fair to you or  
23 to the Government for that matter to not devote a substantial  
24 time and attention to the many issues, some of which were  
25 complicated, that were presented in your lawyer's brief and

1     then, of course, in the Government's brief. So, anyway, thank  
2     you, Mr. Libous.

3             Now, I do not believe in keeping a defendant in  
4     suspense about what sentence I intend to impose. So, I'm  
5     going to tell you upfront what that sentence is and then I'm  
6     going to explain my reasoning, which is required under the law  
7     and you are entitled to hear it as well, but even if you don't  
8     hear it, I have to do it. So, I'm going to do both of those  
9     things.

10            But let me say first that in deciding the  
11     appropriate sentence in this case, I have considered all of  
12     the statutory factors set forth in 18, United States Code,  
13     Section 3553(a). Having done so, I believe that a sentence of  
14     six months imprisonment, to be followed by one year of  
15     supervised release on each count to run concurrently, as well  
16     as a \$25,000 fine and 100 hours of community service as a  
17     condition of supervised release is sufficient but not greater  
18     than necessary to comply with the purposes of sentencing set  
19     forth in the statute.

20            My reasoning is as follows: The Defendant has been  
21     convicted of filing a false personal income tax return for  
22     each of the years 2007, 2008 and 2009.

23            Starting in 2006 and continuing through 2009, which  
24     is a four-year period, the Defendant failed to report income  
25     he received as an attorney and as a partner in a company that

1 builds and services cell phone towers. Including 2006, he  
2 underreported his income by approximately a \$100,000 or maybe  
3 a little bit less than that, but approximately a \$100,000,  
4 resulting in a total tax loss of about \$38,000.

5           Mr. Libous is both an attorney, and he was at the  
6 time of the offenses, and has now -- has since become a  
7 successful businessman. He certainly knew what he was doing  
8 at the time he committed these offenses both in terms of the  
9 fees he earned but chose not to report and as to the personal  
10 expenses he ran through his business.

11           These are serious crimes. Everybody, everybody has  
12 to pay taxes and the nation's tax system depends on those  
13 taxes, and the nation's defense, the nation's infrastructure,  
14 everything that we do depends on taxpayers accurately  
15 reporting their income and taxes. Mr. Libous knew that and he  
16 nonetheless chose to file a series of materially false tax  
17 returns. At the same time, the offense was not a violent  
18 crime and the Defendant has no prior criminal record.

19           It's also clear from the dozens of letters that I  
20 received that Mr. Libous is a compassionate and kind person  
21 who is deeply involved in many charitable activities  
22 particularly at his church. There is no question that he is  
23 actively involved in his church's outreach to those in the  
24 community in need of assistance, including the homeless and  
25 people struggling with drug addiction and alcoholism. He has



1 even rendered personal assistance on a number of occasions to  
2 elderly victims of Hurricane Sandy. So, I have no doubt that  
3 Mr. Libous has many fine personal qualities, which are  
4 certainly relevant to sentencing.

5 Mr. Libous also clearly enjoys a great deal of  
6 emotional support from his family and friends, as well as his  
7 employees. And I want to thank you all for being here today.  
8 I have read your letters, every one of them, and I can see  
9 that they were written from the heart, and the fact that you  
10 are here today certainly is taken note of by me and is of  
11 great importance to Mr. Libous, of course. So, thank you for  
12 being here.

13 Mr. Libous is gainfully employed running a  
14 successful cell tower construction and servicing business --  
15 cell tower and construction -- I'm sorry, successful cell  
16 tower construction and servicing business. That business has  
17 somewhere between 15 and 25 employees and certainly would be  
18 adversely affected, although, in my view, not extraordinarily  
19 adversely affected, by his incarceration even for a short  
20 time. This is a mitigating factor for sentencing.

21 Mr. Libous has paid his taxes, as well as penalties  
22 and interest, for the years 2006 through 2009. This is a  
23 substantial mitigating factor for sentencing.

24 At the same time, I do not believe that he has truly  
25 accepted responsibility for his crimes, because he has never

1 admitted he acted willfully in filing a series of materially  
2 false tax returns, and this is an important fact, because  
3 while, as I said earlier, I would certainly never punish  
4 someone for exercising his constitutional right to a trial, at  
5 the same time, I'm not willing to give a significant benefit  
6 to someone who has not actually accepted responsibility in the  
7 legal sense for what he has done just because he has now filed  
8 amended returns and paid his taxes.

9 I am aware that Mr. Libous's father is suffering  
10 from a very serious illness and that any period of  
11 incarceration will be a hardship for the senior Mr. Libous as  
12 well as the rest of the Defendant's family, but a jail  
13 sentence in a case like this is absolutely necessary,  
14 principally because of the need to promote general deterrence.

15 There is no question in my mind that jail sentences  
16 in tax cases deter similarly situated people from cheating on  
17 their taxes. This is probably an area in which general  
18 deterrence is the most relevant. Of all of the different  
19 types of federal crimes, this might be most pertinent and  
20 relevant in the area of tax crimes. The knowledge that if  
21 caught you will go to jail certainly makes people think that  
22 tax fraud is just not worth it.

23 Here, after considering the nature and circumstances  
24 of the offense, as well as the history and characteristics of  
25 the Defendant, the sentence I intend to impose, as I said, is

1 six months in jail, \$25,000 fine, a hundred hours of community  
2 service as a condition of supervised release, is a fair and  
3 appropriate sentence, and I believe it is sufficient but not  
4 greater than necessary to reflect the seriousness of the  
5 offense, promote respect for the law, provide just punishment  
6 for the offense and afford adequate deterrence to criminal  
7 conduct.

8 I will add that I would impose the same sentence  
9 whether the guideline range was 15 to 21 months at Level 14 or  
10 10 to 16 months at Level 12. So, even if I gave him  
11 acceptance points, he will be at 10 to 16 months, and either  
12 way I would impose the same sentence, because, as I have said  
13 before, is that the Defendant's conduct in committing these  
14 crimes is the most important thing, and it's so important that  
15 I would impose the same sentence even if the guideline range  
16 was based on Offense Level 12.

17 The bottom line is that the Defendant's admirable  
18 personal characteristics, the fact that he has now paid his  
19 taxes for the years '06 through '09, and the fact that his  
20 business and thus his employees will suffer if he is  
21 incarcerated, his lack of a prior criminal record, as well as  
22 the fact that I am imposing a substantial fine, in combination  
23 do warrant a downward variance, but these factors do not  
24 warrant a non-jail sentence given the nature of the offense,  
25 which, after all, is the most important sentencing factor.

1 Does either counsel know of any legal reason why the  
2 sentence should not be imposed as stated? Mr. McMahon.

3 MR. McMAHON: No, Your Honor.

4 THE COURT: Mr. Meringolo.

5 MR. MERINGOLO: No, Your Honor.

6 THE COURT: Mr. Libous, please stand.

7 Mr. Libous, it is the judgment of this Court that  
8 you be committed to the custody of the United States Bureau of  
9 Prisons for a total term of six months, to be followed by one  
10 year of supervised release. The standard conditions of  
11 supervised release one to 13 shall apply.

12 The following mandatory conditions shall also  
13 apply -- they are on Page 26 of the Presentence Report -- as  
14 follows, these are mandatory conditions:

15 The Defendant shall not commit another federal,  
16 state, or local crime.

17 The Defendant shall not illegally possess a  
18 controlled substance.

19 The Defendant shall not possess a firearm or  
20 destructive device.

21 The Defendant shall refrain from any unlawful use of  
22 a controlled substance.

23 The Defendant shall refrain from any unlawful use of  
24 a controlled substance. I'm sorry, I just said that.

25 The Defendant shall submit to one drug testing

1 within 15 days of placement on probation or supervised release  
2 and at least two unscheduled drug tests thereafter, as  
3 directed by the Probation Officer.

4 The Defendant shall cooperate in the collection of  
5 DNA, as directed by the Probation Officer.

6 In addition, the following special conditions shall  
7 apply: One, the Defendant shall perform 100 hours of  
8 community service, as directed by the Probation Officer.

9 Two, the Defendant shall provide the Probation  
10 Officer with access to any requested financial information.

11 Three, the Defendant shall obey the tax laws.

12 Now, the proposed language from the Probation  
13 Officer says, "and comply with the directives of the IRS."  
14 I'm not going to include that explicitly. I think the  
15 Defendant shall obey the tax laws is sufficient, because I  
16 don't want to make it sound like if the IRS demanded that he  
17 do something that was clearly inappropriate, that he had to  
18 comply with it. So, I'm not going to include that. I'm sure  
19 they wouldn't do that, but I don't want to leave open that  
20 possibility.

21 The Defendant is to report to the nearest Probation  
22 Office within 72 hours of release from custody.

23 If the Defendant is sentenced to any period of  
24 supervision -- and, of course, he is -- it is recommended that  
25 the Defendant be supervised by his district of residence.

1           I am imposing a fine in the amount of \$25,000, which  
2   is due immediately. That, by the way, is roughly the amount  
3   of unpaid taxes for the three years of conviction, 2007, 2008,  
4   2009. I think it's appropriate to impose that fine.

5           Restitution is not applicable here.

6           I am imposing the mandatory special assessment of  
7   \$100 per count, for a total of \$300, which is due immediately,  
8   and I believe the Government is entitled to costs of  
9   prosecution, although, I'm not going to order the Defendant to  
10   pay for two copies of the transcript. It seems to me one is  
11   enough.

12           Your affidavit reflects that you want me to order  
13   him to pay the costs of prosecution for the original plus a  
14   copy. Why would I do that?

15           Is that what you are asking for?

16           MR. McMAHON: That is what I asked for, but I won't  
17   object if it's one.

18           THE COURT: You won't object if we take out the  
19   copy?

20           MR. McMAHON: Yes.

21           THE COURT: All right. So, the cost of prosecution  
22   is \$3075.30.

23           The foregoing constitutes the sentence of the Court.

24           You can have a seat, sir.

25           You have a right to appeal your conviction and your

1 sentence. If you are unable to pay the costs of an appeal,  
2 you may apply for leave to appeal without payment of costs.  
3 The Notice of Appeal must be filed within 14 days of the entry  
4 of judgment. Therefore, if you do wish to appeal, you must  
5 advise your attorney to prepare and file a Notice of Appeal  
6 immediately, or if you request, the clerk will immediately  
7 prepare and file a Notice of Appeal on your behalf.

8           There is an underlying Indictment here, right, that  
9 needs to be dismissed?

10           MR. McMAHON: Yes.

11           THE COURT: Are you moving to dismiss it?

12           MR. McMAHON: I so move.

13           THE COURT: Any objection?

14           MR. MERINGOLO: No objection, Your Honor.

15           THE COURT: The underlying Indictment is dismissed.

16           Are there any recommendations that you would like me  
17 to include in the judgment for the BOP?

18           MR. MERINGOLO: Yes, Your Honor. We would like to  
19 recommend Fort Dix.

20           THE COURT: Okay. There are several different  
21 facilities there. Is there one particular one that --

22           MR. MERINGOLO: A low, a low security.

23           THE COURT: My understanding is that it's really --  
24 Fort Dix is not just one institution. There are several  
25 institutions. There are at least two, maybe three, that are

1     meaningfully separated. But I'll include that in the  
2     judgment. I have no problem doing that.

3             Anything else?

4             MR. MERINGOLO: If he can self-surrender, Your  
5     Honor.

6             THE COURT: Any objection to that?

7             MR. McMAHON: No.

8             THE COURT: All right. Well, we normally do 45  
9     days, which seems like it's enough time for BOP to do its work  
10    and figure out where someone is going to go. I will tell you  
11    that my recommendation for Fort Dix is not binding on the  
12    Bureau of Prisons. Your client should know that.

13            MR. MERINGOLO: Yes.

14            THE COURT: Especially for relatively short  
15    sentences, they may not do that. They may want him to serve  
16    it at the MDC in Brooklyn, but I'll recommend it. It's not an  
17    unreasonable request, I'll recommend it, but don't assume that  
18    you are going to get it, that's my only point.

19            So, 45 days from today I think is July 2nd, 2015.

20            Yes, July 2nd, 2015, that's 45 days, and I think  
21    2:00 o'clock on that day. Is that what the judgment will say?

22            So, you are going to surrender to the institution to  
23    be designated by the Bureau of Prisons by 2:00 p.m., on July  
24    2nd, 2015, unless that date is extended by me. You can't just  
25    not show up and you'll get notice. If you don't get notice at



1 some point, you will let me know, and, of course, I would  
2 extend it. I mean, I'm not going to leave you hanging.

3 But go ahead, Mr. Meringolo.

4 MR. MERINGOLO: Your Honor, my client asked me if he  
5 could, if he could extend that until after his father's trial,  
6 so he could be with his father during the trial.

7 THE COURT: Well, if it wasn't his father, I would  
8 probably say no, but it is his father, that makes it slightly  
9 different. The date of that trial is July 13th, right.

10 All right. I'm willing to do that. So, let's see,  
11 July 13th. How about the week of -- how about July 31st?

12 MR. MERINGOLO: Thank you much, Judge.

13 THE COURT: Is that sufficient?

14 All right. So, the surrender date is July 31st,  
15 2015, at 2:00 p.m. That's a little longer than usual, but I  
16 think under the circumstances it's a reasonable request. Any  
17 objections to bail being continued as previously set?

18 MR. McMAHON: No, Your Honor.

19 THE COURT: All right. Then that's what I'll do.

20 Mr. Libous, if for some reason you are asked to give  
21 a drug test or give a urine sample for a drug test, you will  
22 do so and you will not -- and I'm not saying that you did this  
23 previously, because the evidence is inconclusive, as I said  
24 earlier -- you will not do anything to tamper with or dilute  
25 that sample. I'm not suggesting that you did, but I'm just

1 giving you fair warning that if I found out that something  
2 like that happened, it would result in an immediate revocation  
3 of your bail, notwithstanding your father's trial; do you  
4 understand that?

5 THE DEFENDANT: Understood, yes.

6 THE COURT: Okay. Anything further?

7 MR. McMAHON: No, Your Honor. Thank you.

8 THE COURT: All right.

9 MR. MERINGOLO: Nothing from the defense, Your  
10 Honor. Thank you, Your Honor.

11 THE COURT: All right. Thank you all. Have a good  
12 day.

13 (Case concluded)

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# **EXHIBIT 18**

99T8HOLS

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

09 Cr. 470 (VM)

5 ERIC HOLZER,

6 Defendant.

7 -----x

8 September 29, 2009  
9 4:00 p.m.

10 Before:

11 HON. VICTOR MARRERO

12 District Judge

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the  
Southern District of New York

15 JOAN LOUGHNANE

Assistant United States Attorney

16 PAUL SHECHTMAN

17 Attorney for Defendant

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1 THE COURT: This is a proceeding in the matter of  
2 United States v. Holzer, docket number 09 Cr. 0470.

3 Counsel, please enter your appearances for the record.

4 MS. LOUGHNANE: Joan Loughnane for the government.  
5 Good afternoon, your Honor.

6 MR. SHECHTMAN: Paul Shechtman for Mr. Holzer. Good  
7 afternoon, your Honor.

8 THE COURT: Good afternoon.

9 I will note for the record that the defendant is  
10 present in the courtroom seated next to his attorney.

11 I have read and reviewed the presentence investigation  
12 report, dated September 3, 2009, which was prepared in  
13 connection with today's sentencing of Mr. Holzer. I have also  
14 read and reviewed Mr. Holzer's sentencing submission, dated  
15 September 4, 2009, including the many letters submitted on Mr.  
16 Holzer's behalf by his family, friends, and colleagues.

17 Ms. Loughnane, has the government read and reviewed  
18 the presentence report?

19 MS. LOUGHNANE: We have, your Honor.

20 THE COURT: Does the government have any objections to  
21 the report to raise at this point?

22 MS. LOUGHNANE: No, your Honor.

23 THE COURT: Mr. Shechtman, have you read and reviewed  
24 the presentence report?

25 MR. SHECHTMAN: We have, your Honor.

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1 THE COURT: Have you had an opportunity to discuss it  
2 with Mr. Holzer?

3 MR. SHECHTMAN: Yes, your Honor.

4 THE COURT: Do you have any objections to the report  
5 to raise at this point?

6 MR. SHECHTMAN: No, your Honor.

7 THE COURT: Mr. Holzer, please rise.

8 Mr. Holzer, have you read and reviewed the presentence  
9 report?

10 THE DEFENDANT: I have, your Honor.

11 THE COURT: Have you discussed it with your attorney?

12 THE DEFENDANT: I have, your Honor.

13 THE COURT: On May 7, 2009, Mr. Holzer allocuted  
14 before Magistrate Judge Debra Freeman to Counts One and Two of  
15 information 09 Cr. 0470. Count One charged Mr. Holzer with  
16 conspiracy to commit securities fraud, in violation of 18  
17 U.S.C., Section 371, and Count Two charged Mr. Holzer with  
18 securities fraud, in violation of 15 U.S.C., Sections 78j(b)  
19 and 78ff, 17 C.F.R., Sections 140.10b-5 and 140.10b-5-2, and 18  
20 U.S.C., Section 2.

21 The Court, by order dated September 28, 2009,  
22 determined that Mr. Holzer had entered a plea of guilty  
23 voluntarily and knowingly and that there was a factual basis  
24 for the guilty plea and accepted the defendant's guilty plea.

25 The Court now reiterates its acceptance of the

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1 defendant's guilty plea.

2 Ms. Loughnane, does the government have any comments  
3 or motions for the Court's consideration in connection with  
4 sentencing?

5 MS. LOUGHNANE: Briefly, your Honor.

6 The government is seeking a guideline sentence in this  
7 case, and we believe a guideline sentence is appropriate under  
8 3553(a), and I wanted to direct the Court to a couple of  
9 reasons that we think that is so, and, in particular, address  
10 Mr. Shechtman's letter, which I received this morning, which  
11 points out a sentence that was imposed on another defendant in  
12 a related case, Frederick Bowers.

13 3553(a) points the Court, of course, to the nature and  
14 characteristics of the defendant and the offense, and Mr.  
15 Shechtman wrote to the Court because Frederick Bowers received  
16 a sentence of probation in another related case. Mr. Bowers  
17 received information from the same tipper as Mr. Holzer. And  
18 he points out that the Court is to avoid unwarranted sentencing  
19 disparities among similarly situated defendants. But the  
20 government does not believe Mr. Holzer and Mr. Bowers are  
21 similarly situated in a couple of important respects.

22 Mr. Bowers never traded on the inside information he  
23 received personally. He never traded for his own account or  
24 his own benefit. He passed that information on to a client of  
25 his, only a single client, and that was the extent of his

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1 involvement in the insider trading. Mr. Holzer was involved in  
2 trading for his own benefit, based on the inside information,  
3 at least on two separate occasions that are set forth in the  
4 information, and he also, as is clear from the presentence  
5 report, involved a relative in the trading on those deals.

6 Another important fact for the Court to consider,  
7 particularly if you're looking at the Bowers sentence, is that  
8 Bowers stopped of his own accord completely. He stopped  
9 because he grew uncomfortable with what he was involved in, and  
10 there was really no dispute as to that. Mr. Holzer stopped  
11 because his name appeared on a watch list and it therefore  
12 became clear that he was in serious danger of getting caught.  
13 It's only for that reason that his conduct stopped.

14 So those are two very important differences between  
15 Mr. Bowers and Mr. Holzer. We think the Court should keep  
16 those in mind when you sentence him.

17 Reflecting that, probation recommended a sentence of  
18 probation for Mr. Bowers, and, in fact, the sentence that Judge  
19 Daniels imposed was more severe than what probation  
20 recommended. The probation department had recommended simply  
21 probation. In fact, Judge Daniels imposed a sentence of  
22 probation with 2,000 hours of community service, which is  
23 roughly equivalent to a year of 40-hour weeks of service. So  
24 Judge Daniels imposed more than what probation requested.

25 In this case, and in the case before your Honor,



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1 probation is recommending a guideline sentence, which is 12  
2 months and a day, which is within the 12 to 18 month guideline  
3 sentence that the parties have agreed is the appropriate  
4 calculation.

5 The last thing I guess I would point out is that your  
6 Honor has recognized in other cases, and even in a sentencing  
7 earlier today, that it's important for your sentence to reflect  
8 the severity of the crime, to promote respect for the law, but  
9 also to consider the impact of the crime on the general social  
10 order, and for all of those reasons, as well as the nature and  
11 characteristics of this defendant and his offense, we believe a  
12 guideline sentence is appropriate in this case.

13 THE COURT: Thank you.

14 Mr. Shechtman, do you have any additional comments  
15 with regards to sentencing?

16 MR. SHECHTMAN: I do, Judge. I spoke to your law  
17 clerk about Cheryl Horowitz speaking briefly, literally for a  
18 minute, and if your Honor is open to that possibility, she  
19 would very much like to do it. I think you will find her  
20 remarks both short and heartfelt, but if not, I am happy to  
21 proceed.

22 THE COURT: We know that that individual is among  
23 those who wrote a letter. If you feel strongly that something  
24 further said would enhance the record, I will give her one  
25 minute.

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1 MR. SHECHTMAN: I will take it, your Honor, just  
2 because I think her words will be meaningful.

3 MS. HOROWITZ: Good afternoon. Thank you.

4 In 2000, I was diagnosed with colon cancer, Crohn's  
5 disease and proctitis. It was a triple whammy. My career as a  
6 dancer came to a halt. My health problems soon became  
7 financial problems with mounting medical bills and tax issues.  
8 Buried in debt, with letters piling up from insurance companies  
9 and tax authorities, I turned to Eric Holzer, a friend, for  
10 help. Eric spent hours on the phone working out payment plans.  
11 He wrote numerous letters on my behalf and he negotiated for  
12 me. He was my guardian angel. He never made me feel  
13 uncomfortable. He talked me through everything. He took my  
14 phone calls late at night and on the weekends, and he made me  
15 feel as if I was a high paying client at his firm, although he  
16 was paid nothing. Even when I offered him the smallest amount  
17 of money he told me not to worry.

18 I am here today to speak for Eric because of all he  
19 has done and meant to me. Many of our friends will tell you  
20 similar stories, and when I heard Eric was arrested I was  
21 shocked. We all were. I understand Eric made a serious  
22 mistake, but Eric Holzer saved my life. I have trusted him for  
23 years and I will continue to do so. I pray that you will weigh  
24 his good deeds and character when sentencing him.

25 Thank you.

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1 THE COURT: Thank you.

2 Mr. Shechtman.

3 MR. SHECHTMAN: Judge Marrero, I stand here with some  
4 temerity. Your Honor has written several times in recent  
5 months about sentencing in so-called white-collar cases, and  
6 indeed, your Honor spoke about it again today. This, I  
7 suppose, is a white-collar case, but I believe it's different  
8 from the ones your Honor has written about.

9 I start with Eric Holzer's crime, for that is what  
10 brings us here. On two occasions in 2005 Eric knowingly traded  
11 on inside information obtained from his then close friend Matt  
12 Devlin, information that Devlin had gleaned from Devlin's wife.  
13 I wrote in my sentencing letter, and I firmly believe, that  
14 this case is at the perimeter of 10b-5 law and not at its core.  
15 The fiduciary duty breached here was a husband's duty to his  
16 wife. I repeat that point today.

17 In doing so, I do not mean to suggest of course that  
18 Eric is not guilty of insider trading. I agree completely with  
19 the law as it was set forth to you in the government's recent  
20 memorandum. Rather, I hope to give the Court some  
21 understanding of why it was that Eric dropped his guard and did  
22 what he did. Eric saw a tip from Devlin as one step removed  
23 from a tip overheard in a bar or at a party. It was not a tip  
24 based on information from Lehman Brothers where Devlin worked  
25 or Paul Hastings where Eric worked. It was one step removed,

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1 but it was a criminal step.

2 Judge, as you know, Eric stopped his criminal conduct  
3 in December 2005 when his name appeared on a watch list at  
4 Devlin's wife's firm. The government has characterized it  
5 today as that he was caught. But of course he wasn't caught.  
6 He stopped because that watch list was truly a wake-up call and  
7 he woke up. Devlin did not. He continued to tip others for  
8 the next three years on more than 12 deals. Those tippees  
9 truly only stopped when they were caught and they earned  
10 literally millions of dollars. Eric could have gotten back in  
11 at any time, but he never asked. As I said, he had woken up.

12 Judge, the probation office writes that Eric Holzer's  
13 life outside of this case demonstrates, and I quote, "a good  
14 person who made a terrible mistake." Those words sum up this  
15 sad case. Wherever Eric has spent time he has been respected  
16 and he has done good. In high school he tutored others and  
17 worked at the local youth court and the local social service  
18 center. In college he double majored and passed the CPA exam  
19 in one sitting. In law school he graduated in the top five  
20 percent of his class and again tutored others. As one friend  
21 has written to the Court, he would help anyone who asked or  
22 seemed lost. He was a star soccer player and his guttiness  
23 inspired his teammates.

24 He worked as a summer law clerk to a bankruptcy judge  
25 here in the Southern District, and when the judge died he

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1 stayed on to assist the court. At his law firm he took on  
2 numerous pro bono assignments despite stringent billing hours.  
3 Outside work he helped friends and friends of friends who  
4 needed tax preparation assistance. You heard from one of them  
5 today. I thank you for doing so. But she described Eric as  
6 her guardian angel, her godsend. Others would and have said  
7 the same word. Whatever Eric did for them he did for free.

8 Eric has also been on the board of his co-op. I say  
9 that because my own experience teaches that nowhere in life is  
10 there a job more selfless nor thankless.

11 Before his arrest, well before his arrest, and while  
12 working 60 hours a week at a law firm, he found time to  
13 volunteer at the Upper Midtown Chabad, a Jewish center on  
14 Manhattan's East Side, supervising children at the synagogue's  
15 preschool and assisting in other community projects. Rabbi  
16 Shmuel Metzger is in court today to show his support for Eric.  
17 By his presence he hopes to say to the Court, and show the  
18 Court, his support for Eric.

19 Since his arrest, with more time on his hands, Eric  
20 has worked for New York Cares. He has spent time reading  
21 stories to young children at homeless shelters, socializing  
22 with senior citizens at a hospital for the aged, and working  
23 with offenders at the midtown community court. And always he  
24 has cared for his family. His grandmother is 89 years old and  
25 cannot be here today, but Eric dotes on her.

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1           Your Honor has rightly questioned those who steal and  
2       victimize others and then give a fraction of their ill-gotten  
3       gains to charity so as to burnish their image. This is not  
4       such a case. Eric's good deeds involve his time, not his  
5       money; his heart, not his wallet. They have no ulterior  
6       motive. They reflect who he is.

7           In my sentencing letter, Judge, I wrote about the  
8       collateral consequences of Eric's conviction. As lawyers and  
9       as a judge, we call them collateral, but of course they flow  
10      inexorably from the conviction. They are direct, and in this  
11      case they are devastating. Eric will lose his law license and  
12      his CPA license. He will lose them today when your Honor  
13      pronounces sentence. He will even lose a real estate license  
14      that he obtained several years ago.

15          By my rough count, Eric Holzer spent more than 1,000  
16      hours in law school classes and another 350 hours at NYU's  
17      distinguished advanced tax program. That does not count time  
18      preparing for classes or studying for the bar. All of that  
19      likely more than 5,000 hours of preparation for a career in the  
20      law is lost. How serious a consequence is it? My bet is that  
21      most lawyers, if given a choice between a short prison sentence  
22      and losing their law license, would opt for the former.

23          Eric has also forfeited his ill-gotten gains. Today I  
24      have given the government a check for \$119,000. Eric still  
25      owns a heavily mortgaged apartment but has little else. My

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1 father used to employ the expression that some people have a  
2 bright future behind them. Eric once had a bright future ahead  
3 of him. A star tax lawyer who scoured the tax reports and  
4 relished in advising clients on the intricacies of the law; the  
5 person other associates went to on knotty issues; a sure thing  
6 to make partner. All of that is no more.

7 I know that your Honor is particularly concerned about  
8 disparity amongst similarly situated defendants. And here I  
9 differ from the government. I believe that the recent sentence  
10 of Frederick Bowers deserves attention. Bowers, like Eric, was  
11 tipped by Matthew Devlin. Bowers, like Eric, stopped taking  
12 information from Devlin when others continued to do so.  
13 Bowers, like Eric, had no criminal record and was facing a  
14 guideline range of 12 to 18 months. As you know, Judge Daniels  
15 sentenced Bowers to probation and 2,000 hours' community  
16 service. To be sure, there are differences in the case.  
17 Bowers' personal profit was only \$12,000. But he was a  
18 securities professional. He worked at Lehman Brothers and he  
19 tipped the client who made \$200,000 in illegal profits. A  
20 stockbroker gains good will when his client profits, and the  
21 harm to the integrity of the marketplace is the same whether  
22 the broker or client is trading.

23 Bowers' sentence has a lengthy dose of community  
24 service. If the Court were to impose a similar sentence here,  
25 Eric could perform it with Rabbi Metzger, or anywhere that the

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1 Court or probation thought was appropriate. It would be a  
2 stiff punishment but, unlike an incarcerative sentence, it  
3 would be a productive use of those hours.

4 Judge, I have gotten to know Eric Holzer well. We  
5 have spent a great deal of time together, as happens between  
6 lawyer and client. He will rebuild his life. He is already  
7 trying to build a tax return preparation practice and has been  
8 able to find a few paying clients. He will continue to care  
9 for his friends, for his family, and for his girlfriend Cindy  
10 who has stood by him throughout this past year. She, too, is  
11 in court today. He will continue to find time for good deeds.  
12 Why? Because that is who he is.

13 Judge, the guidelines call for 12 to 18 months.  
14 Probation recommends a year and a day which would allow for  
15 good time credit. But as is so often the case, the guidelines  
16 are harsh and mechanical and don't factor in the good that a  
17 person has done, the substantial loss he has already suffered,  
18 and the unique nature of this case.

19 In preparing for Eric's sentencing, I came across a  
20 phrase from another judge in this courthouse, Judge Lynch, who  
21 I believe sat for the first time as a member of the Second  
22 Circuit today. Judge Lynch wrote about a defendant who was  
23 "old enough to have a meaningful record of good behavior, but  
24 young enough to be given a second chance." Those words fit  
25 Eric Holzer. He is old enough to have a meaningful record of



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1 good behavior and young enough, I hope, to be given a second  
2 chance.

3 The words of the probation department also fit: "A  
4 good person who made a terrible mistake."

5 I would ask that Eric Holzer be spared jail and given  
6 a second chance. He will not disappoint you or the people who  
7 are here today to support him. Of that, your Honor, I have  
8 absolutely no doubt.

9 I thank the Court.

10 THE COURT: Thank you. Mr. Holzer, is there anything  
11 you would like to say on your behalf before the Court sentences  
12 you?

13 THE DEFENDANT: Yes, your Honor.

14 Your Honor, today is the saddest and most difficult  
15 day of my life. I never imagined I would be standing here  
16 awaiting sentence for a crime. More than anyone, I know what I  
17 did four years ago was wrong. When Matthew Devlin approached  
18 me twice in 2005, with information he overheard from his wife,  
19 at the time I rationalized that to like somebody overhearing a  
20 conversation at a party. It was the worst judgment of my  
21 entire life with the worst consequences.

22 For more than 20 years my goal has always been to be  
23 an attorney to practice law, tax law. Now I know that goal  
24 will never be fulfilled because of my actions.

25 I have tried to live a good and honest life, one

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1 filled with love, faith and strong moral values. I have tried  
2 to help people in the community to give back because of all I  
3 was fortunate enough to receive. As one of my friends wrote, I  
4 am always the person who looks to raise people's spirits, to  
5 always find the silver lining no matter how dark the cloud.  
6 For me now there is no silver lining. I have embarrassed  
7 myself, my friends, my family, and my colleagues, which I  
8 apologize sincerely. I have destroyed everything I have worked  
9 for throughout my life. My law degree, I practiced law, my CPA  
10 license, my reputation, my career, and my financial stability.  
11 I know there is life ahead of me, but one which is very  
12 different than the one I envisioned a while ago.

13 Your Honor, I take full responsibility for my actions.  
14 I make no excuses. I understand that you have to take all of  
15 the circumstances into account for my sentencing, but I want  
16 you to know, I need you to know, that the person standing in  
17 front of you is ashamed and that you will never find Eric  
18 Holzer in a situation like this again. I pray for your  
19 leniency.

20 Thank you.

21 THE COURT: In accordance with the decision by the  
22 United States Supreme Court in United States v. Booker, while  
23 the United States sentencing guidelines are not mandatory, the  
24 Court nonetheless must consult those guidelines and take them  
25 into account when sentencing. Therefore, the Court has

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1 considered the findings of facts stated in the presentence  
2 report, as well as the guidelines analysis and the  
3 recommendations contained therein. The Court has weighed this  
4 information along with the factors listed in 18 U.S.C., Section  
5 3553(a) in coming to its final sentencing decision in this  
6 case.

7 The Court adopts the factual recitation in the  
8 presentence investigation report. Therefore, the Court finds  
9 that under the guidelines, Mr. Holzer's offense level amounts  
10 to 13 and his criminal history category falls into category I.  
11 The recommended range of imprisonment for this offense level  
12 and criminal history category is 12 to 18 months.

13 Mr. Holzer allocuted to one count of conspiracy to  
14 commit securities fraud and to one count of securities fraud.  
15 He used information that he knew was material and nonpublic in  
16 connection with the purchase of shares of at least two stocks,  
17 Eon Labs and Abgenix, and on at least one occasion he  
18 compensated the provider of this inside information with cash.  
19 The government and the defendant agree that the loss amount  
20 attributable to the information he obtained by illegal means is  
21 \$119,351.

22 Subsection (a)(1) of 18 U.S.C., Section 3553(a)  
23 requires that courts take into consideration the nature and  
24 circumstances of the offense and the history and  
25 characteristics of the defendant. The Court is aware of Mr.

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1 Holzer's commendable community service and his pro bono work  
2 with various not-for-profit organizations. The Court is also  
3 aware that Mr. Holzer has no criminal history, and that the  
4 probation office's characterization of Mr. Holzer is that "his  
5 life outside of this case demonstrates that he is a good person  
6 who made a terrible mistake." However, despite Mr. Holzer's  
7 assessment by the probation office, he knowingly traded on  
8 material, nonpublic information for his own personal gain, and  
9 according to the PSR, he agreed to stop receiving those tips  
10 only after he became aware that his name appeared on a watch  
11 list. In addition, Mr. Holzer committed these acts while a  
12 member of the state bar and working as a tax attorney.

13 Subsection (a)(2) of 18 U.S.C., Section 3553 requires  
14 that the Court consider the need for the sentence to promote  
15 certain objectives of the criminal justice system, namely,  
16 punishment, specific and general deterrence, and  
17 rehabilitation.

18 Pursuant to Section 3553(a)(6), the Court is also  
19 directed to consider the need to avoid sentencing disparities  
20 among defendants with similar records and similar offenses in  
21 other cases, as well as in connection with the case at hand.

22 On September 16, 2009, in a case related to this one,  
23 Judge Daniels sentenced Frederick Bowers to a term of three  
24 years of probation, a \$15,000 fine, and 2,000 hours of  
25 community service. There are some similarities between the

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1 circumstances of Mr. Bowers and Mr. Holzer. Most notably, the  
2 total offense level for both is 13, resulting in the same  
3 sentencing guidelines range of 12 to 18 months. In addition,  
4 both are considered by the probation office to be good people  
5 who made terrible mistakes.

6           However, there are also important differences between  
7 the two cases. Mr. Bowers did not trade on the insider  
8 information that he received. Rather, he assisted in providing  
9 the information to others, for which he was compensated a total  
10 of approximately \$12,000. Mr. Holzer, however, did trade on  
11 the insider information on multiple occasions, in accounts  
12 under both his name and his relatives' names, and he received  
13 in excess of \$119,000 in profits from those acts --  
14 significantly more than Mr. Bowers received. In addition, the  
15 probation office recommended a term of probation for  
16 Mr. Bowers. In this case, however, the probation office  
17 recommends a sentence of 12 months and one day for Mr. Holzer.

18           Mr. Holzer, please rise.

19           Taking into account the nature and circumstances of  
20 the offense and the history and characteristics of the  
21 defendant, and considering all of the factors listed in 18  
22 U.S.C., Section 3553(a), the Court finds that a sentence of  
23 five years of probation is appropriate and that it is  
24 reasonable in these circumstances.

25           The term of probation shall be conditioned upon your

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1 service of nine months in a residential reentry center, to be  
2 served on consecutive weekends, to begin on a date designated  
3 by the probation office. You shall report to the residential  
4 reentry center designated by the probation office and you shall  
5 remain on weekends from Friday through the following Monday  
6 morning. In addition, you may, but are not required, to  
7 satisfy the nine month requirement by serving in the  
8 residential reentry center on a schedule of consecutive days or  
9 weekends and/or weekdays, subject to the center's availability,  
10 on a program approved by the probation office.

11 In addition, you are ordered to pay a fine of \$15,000.

12 The Court finds that the sentence imposed upon Mr.  
13 Holzer is reasonable in consideration of the factors stated in  
14 18 U.S.C., Section 3553(a), in that it is sufficient but not  
15 greater than necessary to comply with the purposes of  
16 sentencing.

17 I have also approved the forfeiture as applicable in  
18 this case. The government has submitted an order of forfeiture  
19 of a sum of \$119,351, which I will endorse. This money shall  
20 be forfeited to the United States.

21 You are also in addition ordered to pay to the United  
22 States a special assessment of \$200, which shall be due  
23 immediately.

24 You must comply with the standard conditions of  
25 probation and the following mandatory conditions:

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1           You shall not commit another federal, state or local  
2 crime.

3           You shall not illegally possess a controlled  
4 substance.

5           You shall not possess a firearm or destructive device.

6           You shall refrain from any unlawful use of a  
7 controlled substance. You shall submit to one drug testing  
8 within 15 days of placement on probation and at least two  
9 unscheduled drug tests thereafter, as directed by the probation  
10 officer.

11           You shall cooperate in the collection of DNA as  
12 directed by the probation officer.

13           In addition, you shall obey the following special  
14 conditions:

15           You shall provide the probation officer with access to  
16 any requested financial information.

17           You shall not incur any new credit card charges or  
18 open additional lines of credit without the approval of the  
19 probation officer unless you are in compliance with the  
20 installment payment schedule. The installment payment schedule  
21 relates specifically, in addition to the restitution and  
22 forfeiture, to the fine. That fine must be paid in equal  
23 monthly installments during the course of the five years of  
24 probation.

25           You shall report to the nearest probation office

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1 within 72 hours.

2 The Court recommends that you be supervised by the  
3 district of residence.

4 The sentence as stated is imposed.

5 Mr. Holzer, to the extent that you have the right to  
6 appeal your sentence, and you are unable to pay the cost of an  
7 appeal, you have the right to apply for leave to appeal in  
8 forma pauperis, meaning as a poor person. If you make such a  
9 request, the clerk of court must immediately prepare and file a  
10 notice of appeal on your behalf.

11 Do you understand your right to appeal to the extent  
12 that it exists?

13 THE DEFENDANT: I do, your Honor.

14 THE COURT: Ms. Loughnane, are there any remaining  
15 counts or underlying indictments that need to be dismissed at  
16 this time?

17 MS. LOUGHNANE: There are none.

18 THE COURT: Is there anything else from the  
19 government?

20 MS. LOUGHNANE: No, your Honor.

21 THE COURT: Mr. Shechtman, is there anything else from  
22 the defendant?

23 MR. SHECHTMAN: There is, Judge. Two things. One,  
24 and I apologize, your Honor mentioned restitution in passing.  
25 Is there a restitution order in the case? I wouldn't think so



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1 given the nature of the crime; that is, it is just a  
2 forfeiture.

3 THE COURT: The restitution I referred to was the  
4 forfeiture.

5 MR. SHECHTMAN: Second, and I apologize to the Court,  
6 could you explain for my benefit, but more importantly for Mr.  
7 Holzer, how that sentence works? It is nine months of  
8 weekends?

9 THE COURT: Nine months, which could be served on  
10 consecutive weekends, or, in addition, it could also be served  
11 on any consecutive period of days, weekends or nights, in a  
12 program as approved by the probation office. In other words,  
13 it could be all weekends, or it could be weekends plus a  
14 consecutive number of days, or it could be weekends,  
15 consecutive days and/or evenings.

16 MR. SHECHTMAN: By nine months, one isn't counting up  
17 the days to get nine months, it's nine months of weekends?  
18 Again, I apologize.

19 THE COURT: It is nine months of either weekends or  
20 those consecutive days or evenings.

21 MS. LOUGHNANE: I take it, if I am understanding the  
22 Court correctly, the total sentence --

23 THE COURT: The total has to be nine months.

24 MS. LOUGHNANE: Nine months of days. The number of  
25 days equivalent to nine months of time in the program.

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1           THE COURT: Yes. It is an accumulation of days that  
2 would total nine months. And that has to be over the course of  
3 the five years of probation.

4           MR. SHECHTMAN: I think your Honor referred to it as a  
5 residential reentry center, which is, I am old-fashioned --

6           THE COURT: That is the Bureau of Prisons' designation  
7 for what is ordinarily known as a halfway house or a community  
8 facility. It is not a prison.

9           MR. SHECHTMAN: Typically, those halfway houses allow  
10 someone out to work. Does your Honor's sentence contemplate  
11 that?

12          THE COURT: Whatever regulations apply would apply.  
13 Since he has the option of scheduling on weekends, then  
14 obviously during the week he could work.

15          MR. SHECHTMAN: I apologize to the Court. I am going  
16 to wind up on the phone with the Bureau of Prisons, and I just  
17 want to make sure they and I understand the sentence. If he  
18 were to decide to do the nine months straight, so to speak?

19          THE COURT: He has the option of doing that.

20          MR. SHECHTMAN: If their regulations permit him out to  
21 work during the day, would that be acceptable to the Court?

22          THE COURT: As long as the total amount that he  
23 ultimately serves is nine months, yes.

24          MS. LOUGHNANE: This spins out of Mr. Shechtman's  
25 question. So there is no restitution in your order, it is

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1 solely a forfeiture?

2 THE COURT: That's correct.

3 MR. SHECHTMAN: Finally, your Honor wouldn't consider  
4 substituting home confinement for any portion of it?

5 THE COURT: The sentence as stated is imposed.

6 MR. SHECHTMAN: I thank the Court.

7 oOo

# **EXHIBIT 19**

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Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

11 CR 665 (RPP)

5 H. CLAYTON PETERSON,

6 Defendant.

7 -----x

8  
9 October 11, 2011  
4:15 p.m.

10 Before:

11 HON. ROBERT P. PATTERSON, JR.,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BY: MICHAEL LEVY

ANTONIA APPS

Assistant United States Attorneys

18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLC  
19 Attorneys for Defendant

20 BY: STEVEN R. GLASER

GARY PHILLIPS

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1 THE DEPUTY CLERK: All rise.

2 THE COURT: Please be seated.

3 (Case called)

4 MR. LEVY: Good afternoon, your Honor, Michael Levy  
5 and Antonia Apps for the government.

6 THE COURT: Good afternoon.

7 MR. GLASER: Good afternoon, your Honor. Steven  
8 Glaser and Gary Phillips on behalf of Mr. Peterson.

9 THE COURT: Good afternoon. Good afternoon,  
10 Mr. Peterson.

11 I have a presentence report from the Probation  
12 Department dated September 27th, but I believe I received it  
13 earlier, but maybe not. Maybe I -- so the necessary 35 days  
14 haven't passed, if the September date is correct, unless the  
15 defendant wants to waive that period of time.

16 MR. GLASER: We did request an expedited sentencing,  
17 your Honor, and we will waive. Thank you.

18 THE COURT: All right, Mr. Peterson, you want to waive  
19 the time also?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: All right, sir.

22 And then I have a submission by the defense, from  
23 Mr. Glaser which indicates that -- I'm sorry, that doesn't  
24 indicate it -- from Mr. Glaser dated October 3rd, and together  
25 with the submission and letters from Carrie I Hofmann,

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1 Mr. Peterson's daughter; Drew Peterson, his son; John C. Amman,  
2 long time friend and business associate; Brian Jackson, same;  
3 Jack A. Henry, also the same; Michael Huseby, the same; and  
4 David Liniger, the same. Most of those people, as I recollect  
5 it, worked for Arthur Andersen with Mr. Peterson. I've read  
6 those letters. And also a letter from Paul Miller, who is a  
7 member of the Delta Upsilon Fraternity, and Neil Mulholland,  
8 president and CEO of The National Park Foundation; Daniel  
9 Predovich, a friend and business associate; Timothy Schmidt, a  
10 long time friend; Theresa D. Shelton, friend of Mr. Peterson  
11 for the last 26 years, and Frank York, President of Board of  
12 Kansas State Chapter of Delta Epsilon.

13 And I've also received -- I don't believe I've  
14 received anything from the government.

15 MR. LEVY: That's right, your Honor.

16 THE COURT: I do have the plea agreement here. Have  
17 you reviewed the presentence report, Mr. Glaser, and has Mr.  
18 Peterson reviewed it?

19 MR. GLASER: I have, your Honor, and I've reviewed it  
20 with Mr. Peterson.

21 THE COURT: Are there any changes to be made in the  
22 presentence report?

23 MR. GLASER: Your Honor, in our submission we pointed  
24 out a very few material inaccuracies, but other than that, we  
25 have no --

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Sentence

1 THE COURT: Which inaccuracies? I should correct any  
2 inaccuracies that are currently there. I don't make them until  
3 I hear them both parties agree they should be made.

4 MR. GLASER: There's, honestly, nothing material.  
5 There's a reference to, for example, Mr. Peterson moving to  
6 Washington, D.C., in the 4th grade, whereas he moved when he  
7 was three months old. Nothing of any substance. We've noted  
8 those in our submission, and we believe that the PSR is  
9 materially accurate as a whole.

10 THE COURT: There's nothing that you think would  
11 affect any sentence that I, or the carrying out of any sentence  
12 that I might impose?

13 MR. GLASER: That is correct, your Honor.

14 THE COURT: All right. And the government has no  
15 changes either?

16 MR. LEVY: That's right, your Honor.

17 THE COURT: All right, then I'll hear from you on  
18 sentence, Mr. Glaser.

19 MR. GLASER: Thank you, your Honor. I'm going to be  
20 brief, because I think we made most of the salient points we  
21 needed to in our submission.

22 We are requesting in this case, consistent with our  
23 ability to under the plea agreement, a non-guideline sentence,  
24 generally in accord with what's recommended by the Probation  
25 Office. I would note, your Honor, that --



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1           THE COURT: The Probation Office does not recommend  
2 incarceration.

3           MR. GLASER: Correct, your Honor, and we would  
4 request -- and we would recommend a sentence consistent with  
5 what the probation office recommends, which would be a non-  
6 jail sentence. In my experience, your Honor, obviously you  
7 have far more experience than me, I have not seen a probation  
8 report that has recommended a non-guideline sentence. And I  
9 believe that that reflects the extraordinary nature of Mr.  
10 Peterson and how aberrant his conduct was in this case.

11           And what we would request, your Honor, is in  
12 fashioning a sentence, to look at the totality of Mr.  
13 Peterson's life, rather than just through the prism of  
14 approximately a single week in his life, where he made a very  
15 serious lapse in judgment for which he accepts full  
16 responsibility, and appreciates the wrongful nature. As a  
17 result of that, he has pled guilty. He is a convicted felon,  
18 and all of the consequences that flow from that inure to his  
19 detriment; the loss of a reputation built over a lifetime. He  
20 will not work in his profession any more; potential for  
21 straining an important relationship with his son. The  
22 fundamental question to us, your Honor, is whether there is any  
23 incremental need under these circumstances for a period of  
24 incarceration. And we would submit, your Honor, that that is  
25 simply not necessary in this case; that given the totality and

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1 the consolation of factors here, that the recommended sentence  
2 by the Probation Department, probation plus three months of  
3 home confinement, will serve the factors set forth in 18 U.S.C.  
4 3553(a) .

5 The only minor point I would make, your Honor, is that  
6 I understand that the Probation Office has recommended a  
7 penalty of \$60,000. Now, it's my understanding, and Mr. Levy  
8 will correct me if I'm wrong, is that the government is going  
9 to be asking for forfeiture. We don't care whether it's  
10 characterized as forfeiture or penalty. We're certainly  
11 prepared to pay that, that to which was accrued by the conduct  
12 at issue. We would just request that Mr. Peterson not be  
13 required, in effect, to double pay for that. So certainly  
14 willing to pay the \$60,000 or whatever your Honor imposes, but  
15 we would request that if your Honor imposes it as forfeiture,  
16 then we simply pay it as forfeiture, or if it's just a penalty,  
17 then we pay it as penalty, but not both.

18 THE COURT: Well, I read the presentence report too.  
19 And, by the way, we do get recommendations since Booker, United  
20 States versus Booker, of this sort. We didn't get them when  
21 you were an Assistant. I'm sure it wasn't due to any fault of  
22 yours. But, in any event, we do get some now. And I'm not --  
23 but that's just a minor correction.

24 But when I read the presentence report, it seemed to  
25 me that this defendant has substantial assets and that the fine

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1 was too low, and that I should increase the fine. So I'd like  
2 to not -- for the fact of the violation, as punishment for the  
3 violation, not as reimbursement for the loss sustained. So I  
4 want to give you notice that that's what I was thinking and  
5 still am thinking, and would want to hear from you on that  
6 subject. Because it's a -- that what I was contemplating.  
7 Because otherwise it seemed to me with the real estate assets  
8 that are here, that the money could be raised for more  
9 substantial penalties.

10 And the other thing that I've noted is that  
11 particularly in these cases, and this -- and there are a lot of  
12 them in the Court that -- let me put it this way -- that I  
13 think there's some fault that judges are too lenient on these  
14 cases. And I see articles about that. Because I think most of  
15 the defendants come from similar educational background and  
16 similar success in life background that the judges come from.  
17 And whereas if we get someone who is from a less fortunate  
18 background in nonviolent crimes, pretty heavy sentences are  
19 handed out comparatively. So it always represents a problem  
20 for the judge to be sure that there's a reason for fairness.

21 Now, in this case, you haven't touched on the reasons  
22 for the non-incarceration recommendation of the presentence  
23 report. And maybe they do point to a lot of grounds why Mr.  
24 Peterson should not be sentenced to jail, and I think they're  
25 valid reasons. But I think -- I mean, it's to me quite a

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1 different story from the story of the background of some of the  
2 defendants who have been recently sentenced by my fellow judges  
3 and by myself in these cases. So I'm always concerned that the  
4 notoriety that these cases give or are given by the press, is  
5 going to lead to a misunderstanding on the part of the public  
6 as to why a sentence such as a non-incarcerating sentence here  
7 is done. It's true that most of the -- it's true that most of  
8 the articles that you read just don't get into that. They just  
9 give you the number, say --

10 MR. GLASER: Your Honor --

11 THE COURT: -- judges --

12 MR. GLASER: I apologize.

13 THE COURT: You don't have to apologize. Sentence is  
14 whatever it is and that's it. They don't quote any reasons  
15 beyond it.

16 Now, you've shown in the papers a great sense of  
17 humanity in terms of -- and Christian attitude Judeo-Christian  
18 attitude or Muslim-Christian attitude, whichever, in terms of  
19 concern for his fellow man and doing something about it, not  
20 just writing a check or -- but doing something about it  
21 himself, and sacrificing his own opportunities in doing it. So  
22 that that's one of the things.

23 But I think those things should be spelled out.  
24 Because I don't know whether there's any member of the press  
25 here, but I think that if there is someone from the press or if

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1 they pick up the transcript and read it, they ought to  
2 understand the grounds for a non-incarceration sentence.

3 But I want to hear from you on the fine part. Because  
4 in order to make up for the non-incarceration sentence, it  
5 seems to me there should be a penalty because of the nature of  
6 the crime and to -- otherwise, it's just leaving things sort of  
7 on a par with what they were before the crime was committed.

8 MR. GLASER: Your Honor, your points are very well  
9 taken. And the beauty of our system now is that we do have an  
10 individualized sentencing regime where you can truly look at an  
11 individual and their life, and the context, and make an  
12 individualized determination without necessarily -- with regard  
13 to what is going on in the press which, unfortunately, we have  
14 very limited control over.

15 I would say the following things with regard to this  
16 particular case. It's unlike many of the other cases that we  
17 have seen where there was systematic sharing of information in  
18 order for there to be gain. We have, as I said, an isolated  
19 incident, wrongful as it was, but it was an isolated incident.

20 And in terms of Mr. Peterson himself, we have a, as  
21 attested to in the letters in support, an absolutely sterling  
22 career and reputation for honesty and integrity over a 30 plus  
23 year career that was attested to by people who worked with him  
24 during that time, and who would say -- who said things like  
25 would never cut corners, always led by example in terms of his

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1 integrity.

2 First of all, in terms of his -- and also in terms of  
3 his willingness to give back to the community, your Honor's  
4 exactly right. It wasn't just that he opened up his checkbook,  
5 although he did that too. But it was mentoring those around  
6 him and infusing them with a sense that it was critical for  
7 them as good members of the community to give back to the  
8 community. And there's one very telling example that we  
9 referred to in our papers, that he was such an inspiration to  
10 one of his friends and co-workers, that he engaged in civic and  
11 charitable endeavors to a degree that he never would have, but  
12 for Mr. Peterson.

13 Also, in terms of his selflessness doing things.  
14 Again, on a small or large scale, with nothing in return. Upon  
15 the demise of Arthur Andersen in 2002, which Mr. Peterson of  
16 course had nothing to do with. He was very senior there. He  
17 had approximately 600 people who reported to him. He had  
18 terrific client contacts. And he could have written his own  
19 ticket, for lack of a better word, brought his clients with  
20 him, and commanded a very hefty salary, but he forewent that  
21 opportunity. And it was more important to him that the people  
22 who worked for him, whether they were the senior audit partners  
23 or it was the secretarial staff, that they obtain employment  
24 instead. And he negotiated a resolution in which all of those  
25 people could find employment with the Denver based accounting

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Sentence

1 firm. And to make the deal work it meant that Mr. Peterson  
2 could not join. So he permitted all these people to gain  
3 employment at his own expense. And as his son Drew writes in  
4 his letter, people randomly come up to Drew and talk about what  
5 a selfless and wonderful thing that Mr. Peterson did on their  
6 behalf and how grateful they are. So he touched many many  
7 lives, again asking nothing in return and getting nothing in  
8 return.

9 And on top of that, to further show and demonstrate  
10 that what his character is and why this incident is so  
11 aberrational and out of context, is his honorable service to  
12 our country during the Vietnam war, in which he served in the  
13 First Air Calvary Division, which was among the most decorated  
14 units in Vietnam, and at great personal risk to himself flying  
15 in helicopters at the time, and was a recipient of the Bronze  
16 Star.

17 Your Honor, I would submit that when you put all of  
18 that together, and look at the full measure of the man, rather  
19 than that isolated one week where he had a very very serious  
20 lapse in judgment, there is no incremental value to a period of  
21 incarceration for Mr. Peterson.

22 And with respect to a fine or penalty, your Honor, we  
23 defer to the Court to fashion an appropriate remedy in that  
24 respect, and we would defer to your Honor to come up with  
25 whatever fine or penalty that you believe would be appropriate

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1 for the conduct in this case.

2 THE COURT: All right. Are you done?

3 MR. GLASER: I believe so, your Honor, although if  
4 there is anything else you would like me to add, I'm -- or to  
5 address, I'm happy to do so.

6 THE COURT: I just, I'm glad you addressed what you  
7 did.

8 There are other acts that are mentioned in the letters  
9 that you sent me, and I read the letters carefully.

10 MR. GLASER: Thank you. Some of the -- as you can  
11 tell, some of the letter writers wanted to maintain their  
12 anonymity, and, hence, they were submitted simply to the Court  
13 and provided also to the government for their review as well.  
14 But as you read through the letters, some of the themes you get  
15 are, additionally, that Mr. Peterson is there as a good friend  
16 to people, that he takes interest in their children. There's  
17 an incident in which Mr. Peterson's very close to a friend with  
18 adopted children, and he wasn't asked to do so, but he donated  
19 quite a lot of money to their adoption agency. He's there to  
20 take care of his granddaughter whenever his daughter needs him  
21 to do that, and --

22 THE COURT: On a regular day basis, as I recollect it.

23 MR. GLASER: Yes.

24 THE COURT: So he took over Tuesdays or some one day a  
25 week.



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Sentence

1 MR. GLASER: Exactly. And it was Mr. Peterson's  
2 pleasure to do that, of course.

3 THE COURT: Not just show up for --

4 MR. GLASER: Yeah, on birthdays or the holidays, but  
5 to be an active presence in her life. And despite, you know,  
6 working very hard to achieve, always being there. And despite  
7 the difficult situation of a divorce, being there for his  
8 children and helping them develop and maintaining a close  
9 relationship with them both. It's really an exemplary life,  
10 your Honor, but for this very very serious lapse in judgment  
11 for which Mr. Peterson accepts, you know, full responsibility.

12 The letters touch on just that he's a good natured  
13 person, and is always there willing to drop things on a  
14 minute's notice to help out a friend and to be there for his  
15 friends.

16 I would submit, you know, as I said, an exemplary  
17 life, different than what I have been seeing in the papers of  
18 the many defendants who have been sentenced in insider trading  
19 cases.

20 THE COURT: And with respect to Arthur Andersen, he  
21 was not in the management part of Arthur Andersen that was all  
22 involved.

23 MR. GLASER: That is correct. My understanding is  
24 that occurred in Texas in an industry that Mr. Peterson had  
25 absolutely nothing to do with whatsoever.

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Sentence

1 THE COURT: He was in charge of the Denver office, and  
2 the Denver office is what had the 600 employees.

3 MR. GLASER: That's correct, your Honor.

4 THE COURT: Swept along with the entire disruption  
5 of -- the end of Arthur Andersen.

6 MR. GLASER: Exactly. But, nevertheless, were there  
7 to help the other people there pick up the pieces of their  
8 lives and move on; people who needed a salary in order to put  
9 food on the table for their families.

10 THE COURT: All right.

11 MR. GLASER: Thank you, your Honor.

12 THE COURT: All right. Thank you.

13 Mr. Levy, are you going to say anything in connection  
14 with the sentence?

15 MR. LEVY: No, your Honor, I don't have anything to  
16 say, other than on the issue of the financial penalty, we will  
17 be seeking forfeiture. We're going to ask your Honor to --

18 THE COURT: That forfeiture would be somewhere in the  
19 nature of the 60 to \$70,000?

20 MR. LEVY: Exactly, your Honor. We'll submit the  
21 exact amount, but it is the profits from the trading and should  
22 be --

23 THE COURT: Within the normal period of 30 days.

24 MR. LEVY: That's right, your Honor. Probably much  
25 sooner than that, we'll get you a final number, but I just

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Sentence

1 wanted your Honor to have that in mind when calculating what  
2 other financial penalties.

3 THE COURT: But you don't take any position on the  
4 fine at all?

5 MR. LEVY: No, your Honor. Your Honor has the full  
6 record in front of you, and the government leaves it to your  
7 Honor to craft an appropriate sentence.

8 THE COURT: Before I hear from Mr. Peterson, I just  
9 want to look over the material one second more.

10 Mr. Henry mentioned community activities for the  
11 Greater Denver Corporation, in Colorado Women's College and AMC  
12 Cancer Research and the Volunteers of America, and that he's  
13 testified at the Legislature regarding Civic and Community  
14 Development Activities. I gather that may have been in  
15 Seattle, but I may be wrong.

16 All right. Mr. Peterson, would you like to say  
17 something on your own behalf before I impose sentence?

18 THE DEFENDANT: Yes, your Honor.

19 I come here today as a person who broke the law and  
20 violated the trust of people who relied upon me. I do come  
21 from a humble background. I come from a little town in Kansas  
22 of 1,000 people. Only 20 of my class throughout the year, and  
23 I was the first person in the college. I put myself through  
24 college, and I graduated and got drafted by the U.S. Army,  
25 thanks to Lyndon B. Johnson. That's how I ended up in Vietnam

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Sentence

1 as a private, and did my time and came back, and was 33 years  
2 with Arthur Andersen, starting at the bottom, and going to the  
3 top, managing partner for my last 13 years, and bringing people  
4 in and developing them, mentoring them and making them  
5 successful.

6 I apologize for the hurt that I caused my family, my  
7 friends, and my business associates. I had no intention of  
8 doing that. My life and reputation will never be the same as a  
9 result. At 66 years old I will live with this stigma for the  
10 rest of my life. And that's all I can say. I will accept  
11 whatever penalties you put upon me, and I thank you for your  
12 time and consideration.

13 THE COURT: Thank you, Mr. Peterson.

14 Let me make the necessary findings under the  
15 guidelines.

16 THE COURT: This is a charge of conspiracy to commit  
17 securities fraud under 18 United States Code Section 371 and 15  
18 United States Code Section 78(j)(b) and 78(f)(f), and then a  
19 second count of the security fraud under 15 United States Code,  
20 Section 78(j)(b) and 78(f)(f).

21 The events in question took place between April 8th  
22 and April 15th, in which Mr. Peterson, having inside knowledge  
23 as a director of a company about to be acquired, advised his  
24 son to purchase stock in the company for his daughter.

25 The base offense level -- I should say the guideline,

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1 proper guideline is found under 2B1.4(a) of the guidelines  
2 applicable to a violation of 15 United States Code, Section 78  
3 (j)(b), and that base offense level under that guideline is  
4 eight.

5 Because the amount in question was more than 30,000,  
6 but less than 70,000, six levels are added pursuant to  
7 guideline 2B1.4(b), and 2B1.1(b)(1)(D). That makes a total of  
8 14 levels. And because the defendant abused a position of  
9 trust in a manner that facilitated the commission of the  
10 offense, two levels are added under guideline two -- excuse me  
11 3B1.3, making a total adjusted offense level of 16, from which  
12 three points are deducted under guideline 3E1.1(a) and (b)  
13 because he has admitted his responsibility for the crime in  
14 a timely manner. That leaves an adjusted offense level of 13.

15 Defendant has no prior juvenile adjudications or adult  
16 criminal convictions, other than a number of convictions for  
17 driving under the influence, which do not result in any  
18 criminal history category points, and were committed sometime  
19 ago.

20 Accordingly, the criminal history category, number of  
21 points is zero and the criminal history category is one, for a  
22 total offense level of 13 and a criminal history category of I,  
23 the guidelines call for a sentence of 12 to 18 months, and  
24 supervised release for two to three years, a fine of 3,000 to  
25 \$5 million, and forfeiture, which the government is seeking as

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Sentence

1 I understand it in this case, and special assessment of \$100 on  
2 each count, for a total of \$200, which is mandatory.

3 The presentence report recommends no imprisonment and  
4 a term of two years of probation, with three months served in  
5 home confinement.

6 There are no suggested departures under the  
7 guidelines, but the Court, although it must consider the  
8 guidelines, also has to consider Title 18 and Section 3553(a)  
9 in order to fashion a sentence which is sufficient, but not  
10 greater than necessary to achieve the purposes set forth in  
11 paragraph two of Section 3553(a).

12 Paragraph two requires that the court, in addition to  
13 considering the nature and circumstances of the offense, and  
14 the history and characteristics of the defendant, to also  
15 consider the need for the sentence imposed to reflect the  
16 seriousness of the offense, to promote respect for the law, and  
17 to provide just punishment for the offense; second, to afford  
18 adequate deterrence to criminal conduct. That's under the law,  
19 it is to deter other people from committing the same crime and,  
20 C, to protect the public from further crimes of the defendant.  
21 That provision deals with the deterring of this defendant from  
22 similar conduct in the future; and, D, to provide the defendant  
23 with needed educational and vocational training, medical care  
24 or other correctional treatment in the most effective manner.

25 Well, I think that the presentence report -- I agree

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Sentence

1 with the presentence report with respect to this defendant.  
2 The penalty they suggest is sufficient but not greater than  
3 necessary to protect the public from further crimes of the  
4 defendant. And then I'm making that determination based on the  
5 content of the presentence report, which shows that he engaged  
6 in a number of civic activities not as a figurehead, but as a  
7 participant, a person who gave of himself, not just of his  
8 wallet, and engaged in community activities to help his  
9 community. And that's significant. The record is -- and he's  
10 done that throughout his life from what I gather.

11 The difficulty is that this is a serious crime. And  
12 the reason it is serious is because the greed in this society  
13 has become something that is really obscene. And,  
14 unfortunately, as we've seen in the numerous prosecutions in  
15 this Court the last few years, that inside trading has been  
16 rife. Now, you can't punish people for other people's crimes,  
17 but you are supposed to take into account some deterrence.  
18 And, as I said earlier, one of the difficulties is that these  
19 people come from well educated background. They've got college  
20 degrees in business administration, and business school  
21 degrees, lawyers, and it's very troubling what's going on in  
22 our society. Recently, you may have heard a former lawyer -- I  
23 guess he is still a lawyer -- but he also appears on television  
24 and other programs, is saying that he thinks that lying has  
25 become something that is not considered particularly wrong any

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1 more. And I think he uses as the example the case involving  
2 Edward Washington case, in which the members in government were  
3 involved. But that's just as an example.

4 But these crimes show that -- that are being  
5 prosecuted, that it is a serious problem about people having a  
6 sense of honesty and integrity. And I don't know whether, and  
7 I think in the normal insider trading case, this Judge I think  
8 considers deterrence the main, main thing that the courts have  
9 got to keep in mind, and particularly since they come from --  
10 they're people who have had advantages in life, and so that's  
11 difficult.

12 So I'm going to follow the presentence report, but I'm  
13 going to impose a fine that is greater than they recommend,  
14 because I think that, one, I think there should be a penalty  
15 that -- greater than three months home confinement and  
16 probation for two years. I think the -- well, that this man  
17 will have to forfeit somewhere between 60 and \$70,000, the gain  
18 that was ultimately obtained on behalf of the people who  
19 traded.

20 But now the difficult thing is, well, what is a fair  
21 fine and not retribution, which I don't believe is a proper  
22 sentencing concept.

23 See, the difficulty is that these people, maybe  
24 deterrence doesn't, isn't -- shouldn't be paramount. That's  
25 how I was thinking of this. I'm not sure it should be.



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1 Because this case is different than the other cases or the  
2 other cases being currently prosecuted, because it doesn't  
3 involve scheming with other people to, in the trade to benefit  
4 by inside information, but rather is a one time event,  
5 otherwise exemplary life except for the driving under the  
6 influence.

7 So I'm going to sentence the defendant to probation  
8 with two years, with three months to be served in home  
9 confinement. And there will be special assessment of \$200, and  
10 the defendant forfeit to the United States, pursuant to 18  
11 United States Code, Section 981(a)(1)(C), and 28 United States  
12 Code 2461, all property, real and personal, that constitutes --  
13 is derived from proceeds traceable to the commission of either  
14 of the offenses. And I'm not -- and I'm concerned, however,  
15 Mr. Levy, that this the forfeiture won't be something that is  
16 derived from the proceeds traceable to the commission of any of  
17 the offenses. If he will have -- that he has any property that  
18 constitutes or is derived from the proceeds traceable to the  
19 commission of the offenses, isn't there another section that  
20 you're relying on that the presentence report doesn't reflect?

21 MR. LEVY: I think it may be the substitute assets  
22 provision, your Honor.

23 THE COURT: I'm sorry?

24 MR. LEVY: I think it's the substitute assets  
25 provision. I'm certainly no forfeiture expert, but my

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Sentence

1 understanding is that if there -- if the defendant himself does  
2 not have those proceeds, there is a substitute.

3 THE COURT: But that involves his receiving those  
4 proceeds at sometime, and I don't think you've got evidence  
5 that he received these proceeds at any time.

6 MR. LEVY: I don't think that he personally needs to  
7 have. And there's a conspiracy count in this case.

8 THE COURT: Well, the substitute is if they've been --  
9 as I recollect the provision, Mr. Levy, the substitute  
10 provision applies when he has received them, but has deposed of  
11 them in some way, or something. That's my recollection. But  
12 I'd have to get out the forfeiture section, so I'm putting you  
13 to the test here.

14 MR. LEVY: I'm merely just trying to give your Honor  
15 any sort of an educated analysis on my part.

16 THE COURT: You're going to show me that in your  
17 forfeiture order, because this doesn't seem -- what I've just  
18 stated here doesn't seem to me necessarily applying to the  
19 defendant.

20 MR. LEVY: I do believe, and it's possible we could  
21 pull out the statute itself. The way we worded it in the  
22 information, at least, is all property, real and personal, that  
23 constitutes or is derived from proceeds traceable to the  
24 commission of the offenses. I don't know that there's any  
25 requirement that that have ever been in the hands of this

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1 defendant. I think the proceeds of that trading are derived  
2 from his offense, whether he in fact ever held that money.

3 THE COURT: All right. It doesn't have to be received  
4 by which him.

5 MR. LEVY: I think that's right.

6 THE COURT: Then I won't change my oral statement,  
7 which binds the situation.

8 MR. LEVY: Yes, your Honor, I think forfeiture is  
9 appropriate for the reasons we've discussed.

10 THE COURT: All right.

11 And the mandatory conditions of supervised release  
12 will be that the defendant shall not commit another federal,  
13 state or local crime; defendant shall not illegally possess a  
14 controlled substance; defendant shall not possess a firearm or  
15 destructive device. Mandatory drug testing is suspended based  
16 on the Court's determination that the defendant poses a low  
17 risk of future substance abuse. Standard conditions of  
18 supervision one through 13 will also apply, with the following  
19 special conditions: And that is that the defendant shall  
20 provide the probation officer with access to any requested  
21 financial information, and if deemed necessary by the Probation  
22 Officer, the defendant shall participate in alcohol after care  
23 treatment program under a co-payment plan, which may include  
24 testing via breathalyzer at the direction and discretion of the  
25 Probation Officer. And the defendant shall comply with the

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Sentence

1 conditions of home confinement for a period of three months.  
2 During this time you will remain at your place of residence,  
3 except for employment and religious observations and medical  
4 attendance to medical problems of yourself and your immediate  
5 family, and other activities approved by your Probation  
6 Officer. And you will maintain a telephone at your place of  
7 residence without call forwarding, modem, caller ID, call  
8 waiting or portable cordless telephones for the above period,  
9 at the direction of your Probation Officer.

10 I'm not going to order electronic monitoring. Home  
11 confinement shall commence on a date to be determined by the  
12 probation officer. And should home confinement be imposed, the  
13 defendant shall pay the costs of home confinement on a self  
14 payment, co-payment basis as directed by the Probation Officer.  
15 Upon a showing of good cause, the Court will authorize  
16 electronic monitoring at the request of the Probation Officer.

17 Defendant is to report to the nearest probation office  
18 within 72 hours of release from custody. And if the defendant  
19 is sentenced to any period of supervision, he will be  
20 supervised in the district of his residence. So he is  
21 sentenced to a period of supervision and he'll be supervised in  
22 the district of his residence.

23 Now, I have to determine the amount of the fine, and I  
24 want to just look over the presentence report once more in that  
25 regard and think about provisions of 18 United States Code

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Sentence

1 Section 3553(a).

2 It's a little hard for me to evaluate the real estate  
3 holdings here, but there are a number of real estate holdings,  
4 and also I guess there are 401(k) plans.

5 I would impose a fine of \$400,000. Now, I'll listen  
6 to you on that subject before I finally arrive at a figure, Mr.  
7 Glaser.

8 MR. GLASER: Thank you, your Honor. I think what  
9 should also be taken into account here are the following.

10 THE COURT: And you're entitled to have -- by the way,  
11 since I've raised this, you've entitled to ask for time to  
12 respond if you want to. You don't have to go ahead this time  
13 if you feel this is something that caught you unaware.

14 MR. GLASER: I think I'm prepared to address this now,  
15 your Honor.

16 As a result of any activity of criminal conduct such  
17 as this, there are naturally financial consequences, which I  
18 think I should make the Court aware of, and which should also  
19 be taken into account. Obviously, as a result of this conduct,  
20 Mr. Peterson will never work again in his profession.

21 THE COURT: Well, he's free to work in his profession,  
22 as I see it.

23 MR. GLASER: Well --

24 THE COURT: Accounting.

25 MR. GLASER: Well, two things, your Honor. Really his

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1 specialty is public company accounting. And with a felony  
2 conviction, he will never be hired.

3 And, number two, we are in discussions with the SEC,  
4 and there will be a settlement in which there will be payment  
5 there as well, and it is anticipated that he will agree to not  
6 work in a public company. So between the felony conviction and  
7 the SEC action that's contemplated, which has already been  
8 filed, effectively he will not have a source of income from his  
9 chosen profession.

10 THE COURT: Well, generally, in the civil proceedings  
11 with the SEC, the people who made the -- traded on the inside  
12 are the first line of payment, and so he wouldn't  
13 necessarily -- since he didn't engage in it himself, he would  
14 only be a secondarily liability, I would presume. I think  
15 these other people have the money to pay.

16 MR. GLASER: I think that if I recall the downstream  
17 in terms of disgorgement, which is, would be a joint and  
18 several liability, he would not be required to pay. However,  
19 he will be required to pay the similar forfeiture number that  
20 Mr. Levy has put on the table, as well as they are seeking a  
21 penalty there as well.

22 In addition, Mr. Peterson's son has obviously been  
23 involved in this conduct. Mr. Peterson's son does not have the  
24 wherewithal to make any of the required payments that he needs  
25 to make, nor does he have the wherewithal to pay for his

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1 attorneys fees, all of which Mr. Peterson is paying for as  
2 well. Again, I'm not asking for sympathy from your Honor, or  
3 making excuses.

4 THE COURT: I'm not asking you --

5 MR. GLASER: I'm simply saying that in factoring in --  
6 in making a determination as to what is an appropriate amount  
7 to pay, I think it is important to appreciate all of the  
8 ancillary costs that are being borne by Mr. Peterson here as  
9 well. And so I think those should be taken into account as  
10 well.

11 THE COURT: Well, then maybe you should give me  
12 something. It doesn't have to be -- it doesn't have to be --  
13 little more, so I'd have more understanding -- another factor  
14 that really made this difficult for me to arrive at a figure  
15 is -- you know, I don't know what kind of a, how he lives his  
16 life, put it that way, financially. Some people like me are  
17 real tight wads, and other people, you know, have much more --  
18 live a life a little more elaborate, let me put it that way.  
19 They're used to it. And so it's a little hard to know  
20 whether --

21 MR. GLASER: I would --

22 THE COURT: -- what I'm doing is really, what I am  
23 contemplating doing is immensely hard on somebody or really a  
24 drop in the bucket and better spent than going to the raises  
25 and throwing it all away on Shank's Mare.

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Sentence

1           MR. GLASER: Your Honor, I would describe Mr. Peterson  
2 as not someone who is frivolous with his money. As you can see  
3 from the financials in the PSR, he lives within his means. He  
4 has zero debt.

5           THE COURT: I know, but -- I know that. But, you  
6 know, people build -- people up in Connecticut, for instance,  
7 and even what used to be a farm community where I was brought  
8 up, they're building mini mansions that are worth a lot more  
9 money than they broken down house --

10          MR. GLASER: Mr. Peterson, as I understand it, lives  
11 in the same house in Denver he's lived in for the past 28  
12 years.

13          THE COURT: Right, but there are other properties.

14          MR. GLASER: Certainly there are. But some of those  
15 properties -- you know, it's a part interest in a condo in a  
16 vacation spot. So it sounds more lavish I think than one --

17          THE COURT: Well, that's the sort of detail that I  
18 thought you might want to cover in the letter, rather than --

19          MR. GLASER: If your Honor wouldn't mind, if your  
20 Honor's prepared to set forth the sentence that your Honor has  
21 imposed, and let us submit an additional submission with regard  
22 to an appropriate amount for a penalty, we would appreciate  
23 that. And whatever time your Honor would give us, we would  
24 appreciate it, and we will abide by the Court's timing.

25          THE COURT: Okay. You can have -- what do you want?



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1 I don't know with -- maybe it's more complicated, I mean.

2 MR. GLASER: Two weeks, your Honor?

3 THE COURT: Sure.

4 MR. GLASER: Thank you, your Honor.

5 THE COURT: Is that going to cause a problem in terms  
6 of -- two weeks is the 25th.

7 THE DEPUTY CLERK: That's when the submissions are  
8 going to be in?

9 THE COURT: Yes.

10 MR. GLASER: Yes. Thank you.

11 THE COURT: Because it can be very complicated, I  
12 understand that, especially in view of the obligations he's  
13 undertaking at the SEC, and just, you know, the other things  
14 that were referred to here, which will -- well, I guess that's  
15 the sentence of the court. Then you have -- I think I covered  
16 everything. Have I left out something?

17 MR. LEVY: I think so, your Honor. I, frankly, I'm  
18 not certain whether or not we all have to come back and  
19 actually impose sentence at that time all at once. I don't --  
20 I've never encountered --

21 THE COURT: Do it subject to this letter, which I may  
22 reduce the fine.

23 MR. LEVY: I suppose that's right, your Honor, could  
24 be contemplating --

25 THE COURT: I thought that's what Mr. Glaser --

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1 MR. LEVY: So impose the sentence with the fine as you  
2 stated it, with the possibility of it being amended,  
3 essentially.

4 THE COURT: Well, the fine I would impose would be  
5 \$400,000.

6 MR. LEVY: Okay, with the possibility that it might be  
7 amended.

8 THE COURT: Subject to being, more consideration being  
9 given to the matter upon receiving a letter in two weeks.

10 MR. LEVY: Understood, your Honor.

11 THE COURT: All right. Well, you have two weeks to  
12 file a notice of appeal of your conviction or your sentence  
13 here, Mr. Peterson. All you have to do is write a letter to  
14 the Court, United States District Court, Southern District of  
15 New York 500 Pearl Street, New York, New York and say I wish to  
16 appeal. That preserves your right to appeal. But if isn't  
17 received by the Court within that 14 day period, the Court of  
18 Appeals will not hear your appeal, they'll say you waived it,  
19 and so don't waive it if you want to appeal anything. Just --

20 THE DEFENDANT: I understand your Honor. Thank you.

21 THE COURT: All right. I have to give that warning to  
22 everyone.

23 Well, let me just say something to you. I'm a veteran  
24 also, different war, but I honor your service and it's  
25 important to me. Indeed, I think this country would be in

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Sentence

1 better shape if everyone had some kind of service requirement  
2 to their government, because I think it would put a greater  
3 sense of responsibility in our country, people in our country  
4 if they had had that, and also a greater understanding of other  
5 people, other people who come from different background and  
6 different -- don't speak English well and do other things and  
7 learning all about -- I know I learned a lot in my Army  
8 service, things that my children and others haven't had the  
9 advantage of because of the change in the way we approach these  
10 things and -- but I also think really your service to your  
11 community reflects probably the fact what I learned in the  
12 Army, and your concern about other people probably rises  
13 somewhat from that. I may be wrong. Maybe you had it all your  
14 life or maybe your father or mother gave you the right  
15 learning, as they say out there.

16 For many years I represented a company called  
17 Panhandle Eastern Pipeline, which runs right through Kansas,  
18 and also -- runs through Kansas. And when I first started  
19 representing them, I was sent to Topeka to just to have coffee  
20 with Al Flander, who was still alive and used to see well  
21 wishes at the coffee house in Topeka, Kansas. And that was one  
22 of the good experiences, a good experience.

23 And then to bring you back to the veteran thing  
24 Senator Dole there, and of course he got wounded in World War  
25 II, his hand, he has this deformed hand that showed how

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1 seriously he -- very seriously wounded. And that was a great  
2 experience. But representing Anadarko and Panhandle, and it  
3 was a learning experience for me. And I know the kind of  
4 people you grew up with because I met a lot of them out there  
5 in Kansas, which is I'm sure much farther west than where you  
6 came from, but still -- and you learn about the people. And I  
7 met a lot of them people who came from Kansas and nearby states  
8 in the Army, so I feel I have an understanding of. And I was  
9 on the losing side trying to arrange for the election of  
10 Governor Scranton from Pennsylvania when Barry Goldwater got  
11 the nomination, and saw the events that took place at the  
12 Palace and different -- it was clear that all the things I  
13 learned in the Army still applied to most of the people,  
14 outlooks, and so Army experience did me well -- although we  
15 lost, but we lost for a couple of reasons that I won't go into,  
16 but makes for an interesting story.

17 Now I want to say on the alcohol, I'm older than you  
18 are, but I can tell you I used to, when I was in the Army I  
19 drank, and I particularly drank between serving one tour and  
20 second tour abroad, and by -- right after I got back, because I  
21 thought I lost my crew and they were all dead, and it's just  
22 like when you're 19, 20, it's quite a blow. So -- and people  
23 used to drink, 30's, 40's, the 50's hard alcohol always and be  
24 a hung over from that. Times have changed here, but as you get  
25 older, you can't handle it. You just can't. It doesn't take

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1 much to affect your balance and things like that. So you don't  
2 drink. And just, if you have a problem -- I think you probably  
3 did -- no one ever recognizes that they have a problem. That's  
4 why alcoholics anonymous, one of the tenants. And so don't --  
5 whatever do you on your future, don't go back to the drinking.  
6 That's my only suggestion. And I'm probably wrong with --  
7 there are probably exceptions to the rule, but not worth  
8 ruining your life and ruining the love that your family has for  
9 you. Because dealing with an alcoholic is -- if you get that  
10 way is a very difficult thing. I know too many marriages that  
11 have been ruined by alcoholism and relationships with kids that  
12 have been ruined by alcoholism, and it just a big mistake. But  
13 I don't think that your grandchild would have been left with  
14 you if you were still an alcoholic, so. And I'm sure your  
15 daughter had confidence that you weren't going to go on  
16 drinking yourself blind when you have the day with your child  
17 all these times. So I don't think it's going to come back.  
18 But I feel obliged to just say, be sure you don't get into  
19 that, because that's what -- that's disrespecting yourself. I  
20 have these -- I've had people before me come in from very poor  
21 backgrounds, and the other day one came in, and I had a lot of  
22 trouble getting him on the straight and narrow, he keeps doing  
23 stupid things. And he said, you know, Judge, I finally got it,  
24 I've been disrespecting myself. And I haven't heard from him  
25 since. He's been fine, no problems at all, once he realized

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1 that by his conduct, which is substance abuse he'd been  
2 disrespecting himself. And when I say the other day, it was  
3 about a year ago. That's pretty good.

4 Things out there in Colorado, I had a great -- I had a  
5 lawyer out in Colorado, friend of -- God parent of one of my  
6 children and he was called A.J., and he came from Colorado  
7 Springs, and he was the legal aid lawyer of the year in  
8 Colorado for several years there, in fact ten years ago or so.

9 Thank you very much, and I wish you luck. I think  
10 you've got the right motivations. And I believe your family  
11 should be proud of you, they shouldn't disrespect -- and other  
12 people should be proud of. You've made a mistake here, you've  
13 been penalized, you're going to take your medicine and move on  
14 I often put in sentences -- Robert, I better, if he has  
15 supervised release, I want some community service in the first  
16 year, 50 hours, something like that. That's not as a penalty.  
17 That's to make sure you continue it, because you'll get respect  
18 that way and you'll get self respect that way. Because people  
19 will appreciate everything you do and that's what people need  
20 is respect for themselves. And that was something I learned --  
21 I won't go into the story, but I could tell it to you sometime,  
22 I tell it to other people, not in this case.

23 So I guess that's the sentence of the Court. Good  
24 luck to you. May God bless you and your family.

25 THE DEFENDANT: Thank you your Honor.

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1 MR. LEVY: Thank you, your Honor.

2 MS. APPS: Thank you, your Honor.

3 MR. GLASER: Thank you, your Honor.

4 (Adjourned)

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# **EXHIBIT 20**



August 5, 2016

Your Honor,

I have no hesitation in writing you a reference letter for my friend John Simonlacaj. He has a reputation of being a just man with strong integrity so learning of the charge of tax fraud against him came as a surprise. While I hold no connection to the trial, to you judge, nor your influence on the case, I feel that you should know that John is more than just his crime. He is he truly is a fine man of character.

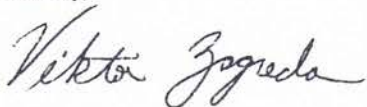
I have known of John almost all of my life from mostly from afar. He and his family's notoriety comes from their very active role within the Albanian community in New York specifically as integral members and contributors to our church, Our Lady of Shkodra, in Hartsdale. John grew up volunteering in the church's youth group, dancing at concerts, organizing fundraisers and supporting whatever cause the church calls for. I developed a friendship with John in the last 15 years through our wives who are very close friends. One thing that you learn quite quickly about John is that he holds a high standard of integrity, a strong moral compass, and most notably, an unshakeable devotion to his family. A dedicated husband to his wife of twenty two years, Drita, their son [REDACTED] [REDACTED] [REDACTED] [REDACTED] and daughters, [REDACTED] (boisterous daddy's girl) and [REDACTED] [REDACTED] [REDACTED] are always at the forefront of John's love and attention. Not forgetting his support and care for his aging parents who live with him. He's a model son, husband, father and an American patriot. God, country, family - these are the tenets which John espouses.

Altruistic John he lends himself selflessly to anyone in need. Just ask the several dozen friends who made him their Best Man at their weddings, Godfather to their children, aided in getting jobs, helped become US Citizens, donations to the church, the list goes on. When my wife and I lost our parents only a month apart, John made sure to check in regularly, visit, or lend his time during our grief. It is a testament to his selfless contribution to others. It's genuine. And that is what makes John's integrity so admirable.

The nature of the offence is out of character for the person I know. There has never been a moment that I have had any doubt of John's integrity and morals. John is a kind, considerate, honest and reliable man. I have no doubt that that he will never be involved in anything like this again.

Men are most certainly fallible beings. Everyone at some point loses their way. I ask that you consider who John is and the impact his absence will have on those who rely so much on him.

Sincerely,



Viktor Zagreda

[REDACTED]  
Mount Kisco, New York [REDACTED]

# **EXHIBIT 21**

July 25,2016

To Judge Vincent Briccetti,

I am writing in reference to John Simonlacaj, who is being sentenced. I have known John for 20 years, we are very good friends.I believe that I am in position to speak to John's moral character.

John is, in short, a good person. He has always been kind and generous with others. He has a strong sense of duty, which implies to his family, community, and job. He also possesses a great deal of integrity, and constantly strives to make sure he is doing the right thing. Anytime I needed help, whether it be working on my house or car John was always there without hesitation.

It must be difficult for you to make decisions like this when you don't actually know the person standing in front of you. I hope you will take this letter and countless others you are receiving, into account when making your decision and understand that John is the kind of person people rally around. That has to say something, so let that please be a factor in your decision.

Thank you,

*Thomas J. Foley*  
Thomas J Foley

## **EXHIBIT 22**

[REDACTED]

[REDACTED]

March 1, 2016

RE: Letter of Reference for John Simonlacaj

Your Honor:

My name is James Halpin, [REDACTED] [REDACTED]. I am a long time friend/colleague of John Simonlacaj of [REDACTED] knowing him both on a professional , business and charitable level.

I can confirm that he is a man of great integrity and is extremely dedicated to his family and work. On numerous occasions he has gone above and beyond to support his co-workers and friends. John's continuous effort in helping the community and charitable organizations is a direct reflection of his core values. He regularly puts the needs of others before his own and has volunteered his time to raise awareness to many notable causes.

I respectfully ask that any consideration be given to him for the good person he is, and his dedication to the betterment of the community.

Best Regards,



**James Halpin**

# **EXHIBIT 23**



The Honorable Vincent Briccetti,

I am contacting you about John Simonlacaj, who is being sentenced in one of your upcoming court cases. I am reaching out to you because John has not only been a long-time friend of my family, but he is also an extraordinary man with an abundance of positive qualities.

Our family met John 18 years ago through a mutual friend. He has been nothing but honest, sincere, and sweet with us from day one. We have always depended on him any time we needed help, and he would do anything for anyone. However, the most important thing in John's life is undoubtedly his wife Drita, his children, [REDACTED] 17, [REDACTED] 12 and [REDACTED] 5. He would do anything for his family and he is a great influence on their lives. I being a wife and mother, feel that John being away from his family and community for any amount of time would be a great loss for everyone.

I hope you consider this information in regards to the charges John is facing. Thank you for taking the time to hear my thoughts on this matter.

Sincerely,



Carmela Landro  
[REDACTED]

# **EXHIBIT 24**



Kathy Rohan  
[REDACTED]  
Valley Cottage, NY [REDACTED]

July 28, 2016

The Honorable Vincent Briccetti  
Federal Building and United States Courthouse  
300 Quarropas Street  
White Plains, NY 10601-4150

Dear Honorable Briccetti:

I am writing to you in reference to John Simonlacaj, who is being sentenced in one of your upcoming court cases. John is a generous and kind person. He is a trustworthy and caring friend who is also helpful.

John is the type of person that you can count on and know he would do anything for anyone. I've known him for fifteen years and consider him a good friend.

I hope you consider this information in regards to the charges John is facing. Anytime away from his family and community, I believe, would be a disservice to all.

Thank you for taking the time to read my letter.

Regards,



Kathy Rohan